SUPREME COURT OF THE UNITED STATES.

No. 366.

HENRY CARPENTER, PLAINTIFF IN ERROR,

vs.

JAMES DEXTER, EXECUTOR OF JOHN B. JAMES, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Declaration notice and affidavit	2	1
Bond for costs	6	3
Order of Court, rule to defendant to plead	7	3
Plea of defendant	9	4
Order of court, leave to cross-examine M. T. Cogswell	8	4
1st trial and judgment	10	4
setting aside do	13	5
to suppress depositions	14	6
of continuance	15	6
over ruling motion for continuance	16	6
2d trial and hearing from day to day	17	6
2d trial and judgment	18	7
taking motion for new trial under advisement	20	8
granting new trial	21	8
3d trial and judgment	22	8
new trial awarded	25	9
4th trial and verdict	27	11
Bill of exceptions	29	11
Motion for new trial	291	116
Order of court taking motion under advisement	294	117
Order of court overruling motion and judgment	295	118
Appeal bond	297	118
Clerk's certificate	299	119

1 Pleas in the Circuit Court of the United States of America for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence, pro tempore, of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said Circuit Court, on Tuesday, the eighteenth day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-first year.

WILLIAM H. BRADLEY, *Clerk.*

Ejectment.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

2 Be it remembered, that on the third day of October, in the year of our Lord one thousand eight hundred and sixty-four, came James Dexter, executor of John B. James, deceased, by Goudy & Chandler, his attorneys, and filed in the office of the clerk of the Circuit Court of the United States for the northern district of Illinois, at Chicago, in said district, his declaration in ejectment against Henry Carpenter, defendant, together with a notice and affidavit thereto attached, and also at the same time filed in the said clerk's office his bond for costs in the said entitled cause, which said declaration, notice, affidavit, and bond are in the words and figures following, to wit:

Declaration.

Circuit Court of the United States for the seventh circuit and northern district of Illinois, of the October term, A. D. 1864.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

James Dexter, executor of John B. James, deceased, who is a citizen of the State of New York, by Goudy & Chandler, his attorneys, complains of Henry Carpenter, who is a citizen of the State of

3 Illinois, in a plea of trespass and ejectment, for that, whereas, the said plaintiff, on the first day of July, A. D. one thousand eight hundred and sixty-four, in said northern district of Illinois, was possessed of certain tract or parcel of land, with the appurtenances, situate in the county of Bureau, in the State and northern district of Illinois, and described as follows, to wit:

The northeast quarter ($\frac{1}{4}$) of section number twenty-five (25,) in township number fifteen (15,) north of range six (6.) east of the fourth principal meridian; which said tract of land exceeds in value the sum of five hundred dollars, and which said premises the said plaintiff, as executor as aforesaid, claims in fee.

And he, the said plaintiff, being so possessed thereof, the said defendant afterwards, to wit, on the same day and year last aforesaid, entered the said premises and ejected the said plaintiff therefrom, and from the time last aforesaid, has unlawfully withheld, and does now unlawfully withhold, from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of one thousand dollars, and therefore he brings suit, &c.

GOUDY & CHANDLER,
Attorney for Plaintiff.

[50-cent U. S. rev. stamp.]

To ——— ———:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the Circuit Court of the United States for the northern district of Illinois, on the first day of the next term of said court, to be held at the city of Chicago, in said district, on the first Monday of October, A. D. 1864, and that upon filing the same, a rule will be entered, requiring you to appear and plead to the said declaration within twenty days after the entry of such rule, and that if you neglect to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 10th day of August, A. D. 1864.

Yours, &c., GOUDY & CHANDLER,
Attorneys for Plaintiff.

STATE OF ILLINOIS, *Bureau County, ss*:

Silas B. , being dully sworn on oath says, that he served the foregoing declaration, by delivering to Henry Carpenter, the said defendant, whom he found in possession of the tract of land mentioned in said declaration, a true and correct copy of the same, and by delivering to the said defendant a notice attached to said copy of the declaration of which the above is a true copy, on the 29th day of August, A. D. 1864.

Subscribed and sworn to before me, this 30th day of August, A. D. 1864.

GEO. M. RADCLIFFE, *Cl'k Cir. C't.*
[SEAL.] By CAIRO TRIMBLE, *Dep'y.*

[5 cents stamp.]

Endorsed, filed Oct. 3d, 1864.

WM. H. BRADLEY, *Clerk.*

6 *Bond.*

Circuit Court, October term, A. D. 1864.

JAMES DEXTER, ex'r,
vs.
HENRY CARPENTER. } In ejectment.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate, that execution may issue against our property for any costs taxed against him.

Dated this third day of October, A. D. 1864.

GOUDY & CHANDLER.

Endorsed, filed Oct. 3d. A. D. 1864.

WM. H. BRADLEY, *Clerk.*

7 And on this day, to wit, the third day of October, in the adjourned October term, A. D. 1865, of said court, in the record of the proceedings thereof, in the said entitled cause, is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER. } Ejectment.

Now comes the plaintiff, by Goudy & Chandler, his attorneys, who file his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant, and on motion of the plaintiff, by his attorney, it is ordered by the court that said cause be docketed, and the defendant ruled to plead within twenty days, or that his default be entered.

8 And on this day, to wit, the twelfth day of October, in the adjourned October term, A. D. 1864, of said court, in the record of the proceedings thereof, in the said entitled cause, is the following entry, to wit:

Record.

JAMES DEXTER, &c.,
vs.
HENRY CARPENTER. } Ejectment.

On motion of the defendant, by his attorney, leave is given him by the court to cross-examine Mason F. Cogswell, a witness whose deposition has been taken de bene esse on the part of the plaintiff and filed herein.

9 And on this day, to wit, the the twenty-first day of October, A. D. 1864, came the said defendant, by Jno. M. Grimes, esq., his attorney, and filed, in the said clerk's office, his plea in the said entitled cause, which said plea is in the words and figures following, to wit:

Plea by Deft.

October term, A. D. 1864.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER. } Ejectment.

UNITED STATES OF AMERICA, *Northern District of Illinois*:

And now comes the said defendant, by Jno. M. Grimes, his attorney, and defends the force and injury, when, &c., and says he is not guilty of the said trespass and ejectment, in manner and form, as said plaintiff hath above thereof complained against him, and of this he puts himself upon the country.

JNO. M. GRIMES,
Attorney for Defendant.

Endorsed: filed Oct. 21, 1864.

WM. H. BRADLEY, *Cl'k.*

10 And on this day, to wit, the twenty-sixth day of May in the adjourned May term, A. D. 1865, of said court, in the record of the proceedings thereof in the said entitled cause, is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER. } Ejectment.

This cause having this day been called for trial, now comes the plaintiff by William C. Goudy, esq., his attorney, who moves the court that a jury be empannelled to try the issue joined upon the plea of the defendant herein. It is thereupon considered by the court

that a jury come to try said issue, and thereupon came a jury of good and lawful men, to wit, Jonathan F. Coe, Benjamin F. Lawrence, Charles F. Powell, Joel W. Hopkins, Phineas Cheney, A. E. Hale, John Batton, Claudius B. French, Edward Kipp, Alfred Knowles, Daniel Mason and Walter P. Hunt, who were all duly elected, tried,
and sworn to well and truly try said issue, and after hearing
11 the evidence, and receiving the instructions of the court, the
jury return into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiffs declaration as follows, to wit, a certain tract or parcel of land with the appurtenances, situate in the county of Bureau, in the State and northern district of Illinois, and described as follows, to wit: the northeast quarter ($\frac{1}{4}$) of section number twenty-five (25) in township number fifteen (15) north of range six (6) east of the fourth principal meridian. We also find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess his damages to the sum of one cent. It is therefore considered and adjudged by the court, that the said plaintiff do have and recover of and from the said defendant possession of the said real estate and premises
above described, according to the force, form and effect of his said
12 recovery, and that he have a writ of possession therefor, and
that he also have and recover of the said defendant, the said sum of one cent his damages, so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of thirty-eight dollars and twenty-five cents, and that he have execution therefor.

13 And on this day, to wit, the thirtieth day of May, in the adjourned May term, A. D. 1865, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER. } Ejectment.

Now comes the defendant, by John M. Grimes, esq., his attorney, who moves the court to set aside and vacate the judgment entered in this cause on the twenty-sixth day of May, instant, and for a new trial of the same under the statute; and it appearing to the satisfaction of the court that all the taxed costs herein have been paid by the said defendant, it is thereupon ordered that said judgment be set aside and vacated, the cause reinstated upon the docket, and a new trial of the same awarded.

14 And on this day, to wit, the twelfth day of October, in the October term, A. D. 1865, of said court, in the record of the

proceedings thereof, in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

On motion of the plaintiff, by his attorney, it is ordered by the court that the deposition of William H. De Witt, filed on the twenty-ninth day of June last, and the deposition of Gideon Hawley, filed on the twenty-second day of Septemter last, and the deposition of Israel Lawton, filed on the sixth day of October, instant, and taken de bene esse on the part of the defendant, be suppressed, and thereupon this cause is continued to the next term.

15 And on this day, to wit, the twentieth day of January, A. D. 1866, in the December term, A. D. 1865, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor, &c., *vs.* HENRY CARPENTER. } Ejectment.

On motion of the defendant, by his attorney, upon affidavit filed, it is ordered by the court that this cause be continued at the cost of the defendant, and that execution issue therefor.

16 And on this day, to wit, the nineteenth day of March, in the adjourned March term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause is the following equity, to wit:

Record.

JAMES DEXTER, executor, &c., *vs.* HENRY CARPENTER. } Ejectment.

Now comes the defendant by his attorney, and moves the court upon affidavit to continue this cause, and the court being fully advised thereon, overrules said motion.

17 And on this day, to wit, the twenty-first day of March, in the adjourned March term, A. D. 1866, of said court, in the record of the proceeedings thereof in the said entitled cause is the following equity, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

And now come the parties by their attorneys, and upon issue joined, thereupon come a jury of good and lawful men, to wit: Joseph Robinson, George R. Collins, John Dixen, James Rose, William Wellett, Samuel Edwards, Edwin R. Moffat, Henry Shaver, Francis H. Bowman, Hiram Bates, Henry H. Polk, and William Hockaday, who were all duly elected, tried and sworn, well and truly to try said issue; and after hearing the evidence, the hour of adjournment having arrived, the arguments of counsel are postponed until to-morrow morning.

18 And on this day, to wit, the twenty-second day of March in the adjourned March term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

Now come again the parties by their attorneys, and now come also the jury in this behalf empannelled and sworn, and after hearing the arguments of counsel and receiving the instructions of the court, the jury return into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration as follows, to wit: Certain tract or parcel of land, with the appurtenances, situate in the county of Bureau, in the State and northern district of Illinois, and described as follows, to wit: The northeast quarter ($\frac{1}{4}$) of section number twenty-

19 five, (25) in township number fifteen, (15) north of range six, (6) east of the fourth principal meridian. We also find the estate established in the plaintiff, on the trial, to be an estate in fee simple, and assess his damages to the sum of one cent, and thereupon the defendant, by his attorney, moves the court for a new trial herein.

20 And on this day, to wit, the ninth day of April. in the adjourned March term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

The motion of the defendant theretofore entered herein by his attorney for a new trial of the cause, having this day been called up, now comes the plaintiff by his attorney, and after hearing the arguments of the plaintiff's counsel, the court takes the same under advisement.

21 And on this day, to wit, the tenth day of April, in the adjourned March term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

The court having considered, and being now fully advised, upon the motion of the defendant heretofore entered herein for a new trial of this cause, sustains said motion and grants a new trial herein.

22 And on this day, to wit, the sixteenth day of January, A. D. 1867, in the December term, A. D. 1866, of said court, in the record of the proceedings thereof, in the said entitled cause, is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

This cause having this day been called for trial, now comes the plaintiff, by his attorney, who moves the court that a jury come to try the issue joined upon the plea filed herein. It is thereupon considered that a jury come to try said issue, and thereupon come a jury of good and lawful men, to wit: Cornelius Guild, William H. Watson, Philip Spaulding, Thomas Speer, Edward Gannett, W. P. Hewett, William P. White, William James, sr., Silas Fife, H. C. Field, Charles C. Morse, and George Lawson, who were all duly elected, tried, and sworn, well and truly to try said issue, and after hearing the evidence, the jury return into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully

23 withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration, as follows, to wit: certain tract or parcel of land, with the appurtenances, situate in the county of Bureau, in the State and northern district of Illinois, and described as follows, to wit, the northeast quarter ($\frac{1}{4}$) of section, number twenty-five (25,) in township number fifteen (15,) north of range six (6,) east of the fourth principal meridian. We also find the estate established in the plaintiff, on the trial, to be an estate in fee-simple, and assess his damages to the sum of one cent. It is thereupon considered and adjudged by the court, that the said plaintiff do have and recover of the said defendant possession of the said real estate and premises above described, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor; and that he also have and recover of the said defendant the said sum of one cent, his damages, so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of forty dollars and sixty-five cents, and that he have execution therefor.

24 And on this day, to wit, the fourteenth day of February, A. D. 1867, in the December, term, A. D. 1866, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased. *vs.* HENRY CARPENTER. } Ejectment.

Now comes the parties by their attorneys, and now comes on to be heard the motion of the defendant hereto filed herein, supported by affidavits, to set aside and vacate the judgment rendered in this cause on the sixteenth day of January last, to reinstate the same upon the docket and grant a new trial; and after hearing the arguments of counsel, the court, not being fully advised in the premises, takes time to consider.

25 And on this day, to wit, the twenty-fourth day of May, in the adjourned May term, A. D. 1867, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

The defendant having paid all the taxed costs, and filed a bond herein as directed by the court, and the court being now fully advised

upon the motion of the defendant heretofore entered herein to set aside and vacate the judgment entered in this cause on the sixteenth day of January last, to reinstate the the same upon the docket and grant a new trial, sustains said motion. It is thereupon ordered that said judgment be set aside and vacated, the cause reinstated upon the docket, and a new trial of the same awarded.

26 And on this day, to wit, the twenty-ninth day of May, in the adjourned term, A. D. 1867, of said court, in the record of the proceedings thereof, in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

Now come the parties by their attorneys, and upon issue joined, thereupon come a jury of good and lawful men, to wit, George Dresser, John M. Kennedy, Anderson Barnett, Harrison O. Henry, William N. Phillips, Silas Marshall, Adam Brewer, Wesley Anderson, M. M. Allison, Mark Ramsey, Edwin J. Cabley, and Henry Dudley, who were all duly elected, tried, and sworn, well and truly to try said issue, and after hearing the the evidence and a part of the arguments of counsel, the hour of adjournment having arrived, the further trial of the cause is postponed until to-morrow morning

27 And on this day, to wit, the thirteenth day of May, in the adjourned May term, A. D. 1867, of said court, in the record of the proceedings thereof in the said entitled cause is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased, *vs.* HENRY CARPENTER. } Ejectment.

Now come again the parties by their attorneys, and now come also the jury, in this behalf empaneled and sworn, and after hearing the coucluding arguments of counsel, the jury retire to consider their verdict, and after a short absence the jury returned into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in his declaration, as follows: Certain tract or parcel of land, with the appurtenances, situate in the county of Bureau, in the State and northern district of Illinois, and described as follows, to wit: The northeast quarter ($\frac{1}{4}$) of section
28 number twenty-five (25,) in township fifteen (15,) north of range six (6,) east of the fourth principal meridian. We also

find the estate established in the plaintiff, on the trial, to be an estate in fee-simple, and assess his damages to the sum of one cent.; and thereupon the defendant, by his attorney, moves the court for a new trial herein.

29 On the hearing of said cause, the following exceptions were taken and allowed by the court, which said exceptions are in the words and figures following, to wit:

Exceptions taken and allowed.

United States Circuit Court, Seventh Circuit and Northern District of Illinois.—May Term, 1887.

HENRY CARPENTER
ads.
JAMES DEXTER, executor, &c. of
JOHN B. JAMES, deceased.

Be it it remembered, that on the 27th day of May, A. D. 1867, and at the said May term of said court, the above cause came on for trial before the honorable Thomas Drummond, District Judge, and ex-officio Judge of this Circuit Court, and a jury duly sworn and empannelled.

And the plaintiff, to maintain the issue on his part, offered and read in evidence a patent from the United States to William T. Davenport, which is as follows, to wit:

30 *U. S. Patent to Wm. T. Davenport.*

Militi Forti et Fideli.

James Monroe, President of the United States of America, to all to whom the presents shall come, Greeting:

Know ye, that in pursuance of the acts of Congress appropriating and granting land to the late army of the United States, passed on and since the sixth day of May, 1812, William T. Davenport having deposited in the General Land Office a warrant in his favor, numbered 16,918, there is granted unto the said William T. Davenport, late a private in Leonard's company of light artillery, a certain tract of land, containing one hundred and sixty acres, being the northeast ¼ of section twenty-five, of township fifteen north, in range six east, in the tract appropriated (by the acts aforesaid) for military bounties in the Territory of Illinos, to have and to hold the said quarter-section of land, with the appurtenances thereof, unto the said William T. Davenport, and to his heirs and assigns forever.

In testimony whereof, I have caused these letters to be
31 made patent, and the seal of the General Land Office to be hereunto affixed.

Given urder my hand, at the City of Washington, this twenty-seventh day of May, in the year of our Lord one thousand eight

hundred and eighteen, and of the independence of the United States the forty-second.

By the President: JAMES MONROE.

[SEAL.] JOSIAH MEIGS,

Commissioner of the General Land Office.

Recorded vol. 25, p. 179, ex.

32 The plaintiff next offered an original deed from William T. Davenport, to Eliphalet Hawley, and on the back thereof endorsed thereon the following: Deed from said Eliphalet Hawley to one Thadeus Munson, and acknowledgements and notes of record, which are as follows, to wit:

Deed from Wm. T. Davenport to Eliphalet Hawley, and certifications.

Know all men by these presents, that I, William T. Davenport, of Bethlehem, in the county of Albany, and State of New York, for and in consideration of the full sum of sixty dollars, current money of the United States, to me truly paid, on and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged,do grant, bargain, sell,convey and confirm unto Eliphalet Hawley, of the City of Albany, in the State of New York, his heirs and assigns forever, one hundred and sixty acres of land, which quantity of land is more fully described in the patent, registered in volume twenty-five, page one hundred and seventy-nine of the records of the General Land Office of the United States, and delivered to me by Josiah Meigs, esq., Commissioner of the

33 General Land Office, a true copy of which is hereinafter contained, viz:

James Monroe, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in pursuance of the acts Congress appropriating and granting land to the late army of the United States, passed on and since the sixth day of May, 1812, William T. Davenport, having deposited in the General Land Office a warrant in his favor, numbered 16,918, there is granted unto the said William T. Davenport, late a private in Leonard's company of light artillery, a certain tract of land, containing one hundred and sixty acres, being the northeast ¼ of section twenty-five, of township fifteen north, in range six east, in the tract appropriated (by the acts aforesaid) for military bounties, in the Territory of Illinois, to have and to hold the said quarter section of land, with the appurtenances thereof, unto the said William Davenport, and to his heirs and assigns forever.

In testimony whereof, I have caused these letters to made

34 patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this twenty-seventh day of May, in the year of our Lord one thousand eight hundred and eighteen, and of the independence of the United States of America, the forty-second.

By the President: JAMES MONROE.

JOSIAH MEIGS,

Commissioner of the General Land Office.

And the reversion and reversions, remainder and remainders, rents, issues and profits of the aforesaid tract of land, and of every part thereof, and all my right, title, interest, claim and demand, of whatever nature, of, to and in the aforesaid one hundred and sixty acres of land, and any part and parcel thereof, in and by virtue of the aforesaid patent, or otherwise; to have and to hold all the aforesaid described tract of land, and every part and parcel thereof, with all the appurtenances and priviliges thereunto belonging, to him the said Eliphalet Hawley, his heirs and assigns, for his own proper use, benefit and behoof, forever, and to and for no other use, intent or purpose whatever; and I, the said William T. Davenport, for
35 myself, my heirs, executors and administrators, do covenant, promise and agree, to and with the said Eliphalet Hawley, his heirs and assigns, that I am now the true, lawful and rightful owner of all and singular the above-mentioned land, by virtue of the aforesaid recited patent; and also, that he, the said Eliphalet Hawley, his heirs and assigns, shall and may, at all times forever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy all and singular the land hereby bargained, sold, transferred and assigned, without the lawful let, suit, trouble, hindrance, molestation, interruption, eviction or disturbance of me. the said William T. Davenport, my heirs or assigns, or any other person or persons whatsoever, and that I, and my heirs, and all and every person or persons, and his and their heirs lawfully claiming any estate, right, title or interest, of, in and to the said land herein described, by, from, and under me, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the request, and at the proper costs and charges in the law, of the said Eliphalet Hawley, his heirs or assigns,
36 make, do, sign, seal and execute, or cause or procure to be made, done, signed, sealed and executed, all and every further and lawful act or acts, thing or things, device or devices, conveyance or conveyances, assurance or assurances, in the law whatsoever, for the further, better and more perfect granting, conveying, releasing, confirming and assuring the premises aforesaid, unto the said Eliphalet Hawley, his heirs and assigns, and to his proper use and behoof forever, according to the true intent and meaning of these presents, and to and for no other use, intent or purpose whatsoever. And I do hereby authorize and irrevocably empower the said Eliphalet Hawley, his heirs and assigns, to take possession of the aforesaid described tract of land, either in my name, or his or their name, or names, as may be deemed best calculated to secure unto him or them forever, the peaceable enjoyment thereof. And lastly, do appoint Nathaniel Pope, esq., secretary of the Territory of Illinois, my lawful attorney, to make for me, and in my name, any further
37 acknowledgement of this instrument of writing, which may be deemed necessary, in strict compliance with the laws of the said Territory of Illinois.

In witness of all the foregoing, I have hereunto affixed my hand and seal, at Albany, in the county of Albany, and State of New

York, this first day of September, one thousand eight hundred and eighteen.

[L. S.] WM. T. DAVENPORT.

Signed, sealed, and delivered in the presence of—
WM. D. WOOSTER,
H. WENDELL, Jun'r.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the first day of September, 1818, the above-named William T. Davenport, who has signed, sealed, and delivered the above instrument of writing, personally appeared before me, the undersigned justice of the peace, and acknowledged, in due form of law, the same to be his free act and deed, for the
38 purposes therein set forth, and also gave his consent that the same should be recorded wherever it might be deemed necessary. In witness of all of which, the said justice has hereunto affixed his hand and seal, and undersigned the same.

[L. S.] H. WENDELL, Jun'r,
Justice of the Peace.

I, William T. Davenport, do declare upon oath, that I am the same person intended and named in the above deed, dated the first day of September, 1818, and more particularly in the patent therein recited at length; and further, that I was duly placed in possession of the patent for the land conveyed in the above deed by receiving the same from Josiah Meigs, esq., commissioner of the General Land Office.

WM. T. DAVENPORT.

Sworn and subscribed before me this first day of September, 1818.

H. WENDELL, Jun'r,
Commissioner, &c., &c.

Received this first day of September, 1818, from Eliphalet Hawley, the sum of sixty dollars, being the consideration money expressed in the above deed.

WM. T. DAVENPORT.

Witness,
H. WENDELL, Jun'r.

39 STATE OF NEW YORK,
City and County of Albany, ss.

CLERK'S OFFICE.

I, Giles K. Winne, clerk of the said city and county, and also clerk of the Supreme, County and Mayor's Courts, being courts of record held therein, do hereby certify that H. Wendell, jr., whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument in writing, and

indorsed thereon, was, at the time of taking such proof or acknowledgment, a justice of the peace in and for the county aforesaid, dwelling in the said county, and duly authorized to take the same; and that I am well acquainted with the handwriting of the said justice, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand, and affixed my official seal as county clerk and clerk of said courts this 27th day of April, 1866.

[L. S.] G. K. WINNIE, *Clerk.*

40 Endorsed: "State of New York.—On this second day of September, 1818, before me came William D. Wooster, one of the subscribing witnesses to the within indenture to me known, who being sworn, saith, that he saw the within-named grantor, William T. Davenport, duly execute and acknowledge the within indenture, and that he knows him to be the same person named and described in, and who acknowledged duly to have executed the same as free act and deed. I allow the same to be recorded.

H. WENDELL, Jun'r,
Commissioner, &c., &c."

STATE OF NEW YORK,
City and County of Albany, ss:

CLERK'S OFFICE.

I, Giles K. Winnie, clerk of the said city and county, and also clerk of the Supreme. County and Mayor's Courts, being courts of record held therein, do hereby certify that H. Wendell, jr., whose name is subscribed to the certificate of proof or acknowledgement of the annexed instrument in writing, and indorsed thereon, was, at the time of taking such proof or acknowledgement, a commis-
41 sioner of deeds in and for the city aforesaid, dwelling in the said city, and duly authorized to take the same; that I am well acquainted with the hand writing of the said commissioner, and verily believe that the signature to the said certificate of proof or acknowledgement is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed my official seal as county clerk and clerk of said courts this 27th day of April, 1866.

[SEAL.] G. K. WINNE, *Clerk.*
[5 ct. U. S. rev. stamp.]

Deed from Eliphalet Hawley to Thadeus Munson, and certifications.

Know all men by these presents, that I, Eliphalet Hawley, in the written indenture named, for and in consideration of the sum of seventy-five dollars, to me in hand paid by Thaddeus Munson, of the city of Albany, the receipt whereof is hereby acknowledged, have

granted, bargained, sold, assigned, and set over, and by these presents do grant, bargain, sell, assign, and set over unto the
42 said Thaddeus, his heirs and assigns forever, all and singular, the lot of land, premises and appurtenances within mentioned and described, subject as therein contained: to have and to hold the same premises, and every part thereof, to the said Thaddeus, his heirs and assigns forever, to and for his sole use, benefit, and behoof. And I, the said Eliphalet, for myself, my heirs, executors, and administrators, do covenant and engage with the said Thaddeus, his heirs and assigns, that I have full right to grant and assign in manner aforesaid, and that free and clear from all former gifts, grants, mortgages, or incumbrances whatsoever; and that I and my heirs will warrant and forever defend the said premises in manner aforesaid to the said Thaddeus, his heirs and assigns.

In witness whereof, I have hereto set my hand and seal this twelfth day of Dec'r, in the year of our Lord 1818.

[SEAL.] ELIPHALET HAWLEY.

STATE OF NEW YORK, *ss:*

On this 12th day of Dec'r, 1818, before me came Eliphalet Hawley, the grantor in the above assignment named, to me known to be the person named and described in, and who duly executed and
43 acknowledged the above assignment.

I allow the same to be recorded.

H. W. WENDELL, JUN'R.,
Commissioner, &c., &c.

Sealed and delivered in presence of—
H. WENDELL, Jun'r.

STATE OF NEW YORK,
City and County of Albany, ss:

CLERK'S OFFICE.

I, Giles K. Winne, clerk of the said city and county, and also clerk of the Supreme, County, and Mayor's Courts, being courts of record, held therein, do hereby certify, that H. Wendell, jr., whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument in writing, and indorsed thereon, was, at the time of taking such proof or acknowledgment, a commissioner of deeds, in and for the city aforesaid, dwelling in the said city, and duly authorized to take the same; that I am well acquainted with the handwriting of the said commissioner, and verily believe that the signature to the said certificate of proof or acknowledgment is
44 genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand, and affixed my official seal as county clerk and clerk of said courts this 27th day of April, 1866.

[SEAL.] G. K. WINNE, *Clerk.*

[5 ct. U. S rev.. stamp.]

"Endorsed: State of Illinois, Madison county."

RECORDER'S OFFCE, EDWARDSVILLE, *May* 17, 1819.

I certify the within deeds, together with the certificates of acknowledgments, are this day recorded and exam'd in my office in Book V, p. 353 and 354."

"William T. Davenport to Eliphalet Hawley, deed, transferred to T. Munson, No. 16,918; N. E. 25, 15 N. 6 E; No. 3,977. Recorded B. V, p. 35–34—380."

At the close of the plaintiff's proof he offered the following deposition:

Deposition attached to said deeds.

Be it remembered, that on application of James Dexter,
45 executor, &c., the plaintiff in a suit now pending in the Circuit Court of the United States for the eighth circuit and northern district of Illinois, wherein Henry Carpenter is defendant, I, James F. Crosby, a notary public of the city and county of Albany, N. Y., have, this twenty-sixth day of April, A. D. 1866, at Albany, in the county of Albany, and State aforesaid, without having given notice to the said defendant or his counsel, proceeded to examine John S. Van Rensselear, de bene esse, as a witness on behalf of the plaintiff in the aforesaid suit, and I certify that the reason for taking said deposition is, and the fact is, that the said witness resides at Albany, in the State of New York, more than one hundred miles from Chicago, Illinois, the place where the court in which said cause is expected to be tried, is appointed by law to be held; and the reason why notice of the time and place of taking said deposition was not given to the said defendant or his counsel is, and the fact is, the said defendant resides in the State of Illinois, more than one hundred miles from Albany, N. Y., the place where said deposition
46 was taken; and John M. Grimes, his counsel, resides in Chicago, Illinois, more than one hundred miles from Albany, aforesaid. And I do further certify, that the said John S. Van Rensselear being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says: That he has for more than sixty years last past been a resident of the city of Albany, in the State of New York; that as long ago as the year 1818, he was well acquainted with Harmanus Wendell, junior, then of the city of Albany, but who is now deceased; that the said Harmanus Wendell, according to the best of his knowledge and belief, then held and exercised the office of commissioner to take affidavits and the acknowledgements of deeds in the said city.

That deponent has often seen the said Harmanus write, and is acquainted with his handwriting and signature; that he believes, and has no doubt, that the signature of Harmanus Wendell, ju'r, as one of the subscribing witnesses to the annexed deed from William Davenport to Eliphalet Hawley, is the true and proper handwriting and signature of the said Harmanus Wendell, ju'r;
47 and deponent further says, that the signature of the said Harmanus, as a justice of the peace, to the certificate of

acknowledgement of the said deed, and also as commissioner to the affidavit subjoined to said deed, are and each of said signatures he believes to be, and has no doubt, is the true and proper handwriting of the said Harmanus; and deponent further says, that he believes, and has no doubt that the signature of the said Harmanus, as commissioner, to the certificate of proof of the execution of the said deed by Wm. D. Wooster, the other subscribing witness thereto, bearing date the 2nd day of September, 1818, and endorsed on the said deed, and also the certificate of acknowledgement of the annexed deed or assignment from Eliphalet Hawley to Thadius Munson, are, and each of said certificates in the true and proper handwriting of the said Harmanus Wendell, jr.

J. S. VAN RENSSELAER.

Witness:
JAMES F. CROSBY.

[5 ct. U. S. rev. stamp.]

48 And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said John S. Van Rensselaer in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof, as witness my hand and notarial seal this 26th day of April, A. D. 1866.

[SEAL.] JAMES F. CROSBY,
Notary Public of the City and County of Albany,
State of New York.

Certificate attached to said deeds.

United States of America. by Reuben E. Fenton, Governor of the State of New York:

It is hereby certified that Giles K. Winne was, on the day of the date of the annexed certificate, clerk of the county of Albany, and duly authorized to grant the same; that the same is in due form, and executed by the proper officer; that the seal affixed to said certificate is the seal of said county; that the signature thereto of the
49 said clerk, is in his proper handwriting and is genuine, and that full faith and credit may and ought to be given to his official acts.

In testimony whereof, the great seal of the State is hereunto affixed. Witness my hand, at the city of Albany, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] R. E. FENTON.

Passed the secretary's office the 27th day of April, 1866.

ERASTUS CLARK,
Deputy Secretary of State.

Endorsed: "Filed April 30th, '66.
"WM. H. BRADLEY, *Clk.*"

50 To the introduction and reading of which deeds in evidence, and to each of them, the said defendant, by his counsel, then and there objected, on the ground that the same, each of them, had not been duly proved, which objections, respectively, the court, upon the statement of plaintiff's counsel that there was a deposition bearing on the execution thereof, the court, for the time, overruled and admitted the deeds, subject to the objection, but, in a subsequent stage of the case, overruled absolutely, and to which ruling of the court in overruling said objections, and in allowing said deeds to be read in evidence, the defendant then and there excepted. Said deeds were then read in evidence.

The plaintiff next offered what purported to be a deed from Thadeus Munson to William James, to the proof of which and introduction of which in evidence, the defendant then and there objected; which objection was overruled by the court, and said deed was read in evidence; to which ruling and overruling said objection, and allowing said deed to be read in evidence, the defendant then and there excepted. Said deed reads as follows, and certificate of acknowledgment and record:

51 This indenture, made the thirteenth day of February, in the year of our Lord one thousand eight hundred and nineteen, between Thaddeus Munson, of the city and county of Albany, and State of New York, of the first part, and William James, of the city, county, and State aforesaid, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one thousand dollars, current money of account of the United States, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and confessed, hath granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents doth grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs and
52 assigns forever, all and singular nineteen pieces or tracts of land, containing one hundred and sixty acres each, amounting in the whole to three thousand and forty acres of land, lying and being in the late Territory, now State, of Illinois, in the tracts appropriated for military bounties, under the acts of Congress, passed on and since the sixth day of May, one thousand eight hundred and twelve, located and described as follows, to wit:

Lot granted to Peter Anthon, being the southeast quarter of section twenty-seven, of township five north, in range one west, as will more fully appear by his patent, dated the fourteenth day of August, one thousand eight hundred and eighteen, and conveyed by the said Anthon to Ross W. Wood, by deed, bearing date the eleventh day of September, one thousand eight hundred and eighteen, which deed was assigned to the first party to this indenture, on the twenty-ninth day of the same month and year. Lot granted to Elizabeth Leicester, widow and heir of Lemuel Herrick, dec'd, by patent,
53 dated the thirty-first of August, one thousand eight hundred and eighteen, and being the northwest quarter of section

twenty-two, of township six north, in range eight west, and conveyed by John Leicester and the said Elizabeth to the first party to this indenture, by deed bearing date the twenty-eighth day of November, one thousand eight hundred and eighteen.

Lot granted Jeremiah Griswold, by patent dated the nineteenth day of December, one thousand eight hundred and seventeen, being the northwest quarter of section thirty-three, of township ten north, in range seven east, and deeded to the said first party on the thirteenth day of November, one thousand eight hundred and eighteen.

Lot granted to Frederick Dickinson, by patent, dated the twenty-third day of July, one thousand eight hundred and eighteen, being the southwest quarter of section thirty-five, of township fourteen north, in range four west, conveyed by the said Dickinson on the seventh day of September, of the same year, to Elisha B.
54 Allen, and by him, on the third day of October, in the same year, to the aforesaid party of the first part.

Lot granted to David Price, son, and the other heirs-at-law of David Price deceased, by patent dated the fourth day of September, one thousand eight hundred and eighteen, being the southeast quarter of section thirty-two, of township two north, in range six west, and conveyed by the said David and the other heirs on the twenty-fourth day of December in the same year to Philip Farrell, and by the said Philip to the said party of the first part, on the twenty-sixth day of the same month and year.

Lot granted to Frederick Dickenson, brother, and other heirs-at-law of Charles Dickinson, deceased, by patent dated the eighteenth day of July, one thousand eight hundred and eighteen, and conveyed by the said Frederick to Elias Williams on the nineteenth day of September of the same year, and by him, the said Elias, to the first party in this indenture on the third day of October, in the same
55 year. The above lot is in the northeast quarter of section thirty, of township eleven north, in range seven east.

Lot granted to Enoch Mack by patent, dated the twenty-ninth of November, one thousand eight hundred and seventeen, being the northeast quarter of section nine, of township twelve, north in range one west, and conveyed by the said Enoch on the fourteenth day of September, one thousand eight hundred and eighteen, to Eliphalet Hawley, and by the said Eliphalet to the first party to this indenture, on the twelfth day of December in the same year.

Lot granted to Ashbel Kingsbury by patent, dated the twenty-sixth day of February, one thousand eight hundred and eighteen, being the northwest quarter of section thirty three, of township nine north, in range three east, and conveyed by the said Ashbel to the first party to this indenture on the twenty-first day of October, in the same year.

Lot granted to George Kelley by patent, dated the four-
56 teenth of August, one thousand eight hundred and eighteen, being the southeast quarter of section twenty-seven, of township nine north, in range four east, and conveyed by the said George, on the twenty-first day September, in the same year, to Ross W. Wood,

and by him, the said Ross W. Wood, to the first party to this indenture, on the thirtieth day of the same month and year.

Lot granted to Jesse Wilson by patent, dated the twenty-ninth of August, one thousand eight hundred and eighteen, being the southwest quarter of section thirty, of township ten north, in range four east, which lot was conveyed by the said Jesse to Ross W. Wood, on the twenty-ninth day of September, in the same year, and by the said Ross W. Wood to the aforesaid first party to these presents, on the thirtieth day of the same month and year.

Lot granted to Robert Jones by patent, dated the twentieth day of February, one thousand eight hundred and eighteen, being
57 the northwest quarter of section twenty-two, of township seven north, in range three west, which lot was conveyed by said Robert on the fifth day of August, in the same year, to Daniel Wood, and by the said Daniel to the 1st party to these presents, on the twelfth day of September, in the same year.

Lot granted to John York by patent, dated the twenty-first day of April, one thousand eight hundred and eighteen, being the northwest quarter of section three, of township nine north, in range four west, which lot was conveyed by said John to Elias Williams, on the fifteenth day of August, in the same year, and by the said Elias to the first party to these presents, on the third day of October, in the same year.

Lot granted to William B. Davenport by patent, dated the twenty-seventh day of May, in the year eighteen hundred and eighteen, being the northeast quarter of section twenty-five, of township fif-
58 teen north, in range six east, which lot was conveyed by said William to Eliphalet Hawley, on the first day of September, in the same year, and by the said Eliphalet to the first party to these present, on the twelfth day of December, in the same year.

Lot granted to George Burkitt (alias) Burkett by patent, dated the twelfth day of May, one thousand eight hundred and eighteen, being the southwest quarter of section two, of township twelve north, in range four west, which lot was conveyed to the first party to these presents by the said George, on the fourth day of November, in the same year.

Lot granted to Philip Plew by patent, dated the eight day of July, one thousand eight hundred and eighteen, being the northwest quarter of section thirteen, of township six north, in range four west, which lot was conveyed by said Philip, on the fifteenth day of
59 August, in the same year, to Daniel Wood, and by him, the said Daniel, to first party to these presents, on the twelfth day of September, in the same year.

Lot granted to Peter Mossey by patent, dated the eighth day of June, one thousand eight hundred and eighteen, being the southwest quarter of section five, of township seven north, in range one east, which lot was conveyed by the said Peter, on the twenty-first day of September, in the same year, to Elisha B. Allen, and by him, the said Elisha, on the third day of October, in the same year, to the first party to these presents.

Lot granted to Stephen Pettit by patent, dated the twenty-ninth day of November, one thousand eight hundred and seventeen, being the northeast quarter of section six, of township five north, in range two west, which lot was conveyed by the said Stephen on the twenty-second day of August, one thousand eight hundred and eighteen, to Ephraim Dewitt, and by him, the said Ephraim, on the first day of December, in the same year, to the first party to these presents.

Lot granted to Martin Herrick by patent, dated the sixth day of December, one thousand eight hundred and seventeen, being the northeast quarter of section thirty-two, of township four north, in range three west, which lot was conveyed by said Martin on the seventeenth day of November, one thousand eight hundred and eighteen, to Ephraim Dewitt, and by him, the said Ephraim, on the first day of December, in the same year, to the first party to these presents.

Lot granted to Samuel Brumley by patent, dated the twenty-second day of June, one thousand eight hundred and eighteen, being the southeast quarter of section twenty-four, of township north, in range three east, which lot was conveyed by the said Samuel, on the fourteenth day of November, in the same same year, to Ephraim Dewitt, and by him, the said Ephraim, on the first day of December, in the same year, to the first party to these presents, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the s'd hereditaments and appurtenances, to have and to hold the said granted, bargained, and described premises to the said party of the second part, and to his heirs and assigns; to the sole and only proper use, benefit and behoof, of the said party of the second part, and to his heirs and assigns forever; and the said party of the first part, for himself, his heirs, executors, administrators, doth covenant, grant, bargain, promise, and agree to and with the said party of the second part, his heirs and assigns, to warrant, and forever to defend, the above bargained premises, and every part and parcel thereof now being in the quiet and peaceable possession of the said party of the second part against the said party of the first part, his heirs, executors, administrators, and assigns, and against all and every other person or persons claiming, or to claim, said premises or any part thereof.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

[SEAL.] THADEOUS MUNSON.

Sealed and delivered in the presence of—

THOS. JAMES.

ESTES HOWE.

STATE OF NEW YORK, *ss:*

63 Be it remembered, that on this thirteenth day of February, in the year of our Lord one thousand eight hundred and nineteen, came before me the above-named Thaddeus Munson, to me well known, and acknowledged to have signed, sealed, and delivered the above deed for the uses and purposes therein expressed. All which I certify according to law, and allow the same to be recorded.

ESTES HOWE,
Judge, Albany, Common Pleas Counsellor, &c., ex-officio, performing the duties of a judge of the Supreme Court at Chambers, &c.

64 *Deed of the following* 19 *lots.*

Position of land.	Section.	Township.	Range.	Acres.
N.W. qr.	33	10 N.	7 E.	160
N.W. qr.	22	6 N.	8 W.	do
N.W. qr.	33	9 N.	3 E.	do
S.W. qr.	2	12 N.	4 W.	do
S.W. qr.	5	7 N.	1 E.	do
S.W. qr.	35	14 N.	4 W.	do
N.W. qr.	3	9 N.	4 W.	do
S.W. qr.	30	10 N.	4 E.	do
S.E. qr.	27	5 N.	1 W.	do
N.E. qr.	25	15 N.	6 E.	do
N.E. qr.	9	12 N.	1 W.	do
N.W. qr.	22	7 N.	3 W.	do
N.W. qr.	13	6 N.	4 W.	do
S.E. qr.	27	9 N.	4 E.	do
N.E. qr.	32	4 N.	3 W.	do
N.E. qr.	6	5 N.	2 W.	do
S.E. qr.	24	5 N.	3 E.	do
S.E. qr.	32	2 N.	6 W.	do
N.E. qr.	30	11 N.	7 E.	
Total	.....	.....	.....	3,040

(This endorsement on the deed was not offered, or intended to be offered, with the deed, as a part of the exhibit.)

W. H. BRADLEY, *Cl'k.*

65 STATE OF ILLINOIS, *Madison County.*

I hereby certify that the within deed, and the acknowledgement thereof, to be duly recorded and ex'd in my office in Book U, page 243, &c., this 17th May, 1819.

JOSIAS RANDLE,
Re'd M.

Thaddeus Munson's deed for 19 lots (3040) ac. to William James. 11 north of the base line and west of the meridian; 8 north of the base line and east of the meridian. No 39. 55.
Recorded B. U, p. 243.

66 Said plaintiff next read the deposition of Gideon Hawley, as follows, to wit:

Be it remembered, that on application of James Dexter, executor of John B. James, the plaintiff in a suit now pending in the Circuit Court of the United States for the eighth circuit and northern district of Illinois, wherein Henry Carpenter is defendant, I, James T. Crosby, notary public for the city and county of Albany, N. Y., have this twenty-third day of September, A. D. 1865, at my office, in the city of Albany, and State aforesaid, without having given notice to the said defendant or his counsel, proceeded to examine Gideon Hawley, de bene esse, as a witness in behalf of the plaintiff in the aforesaid suit, and I certify that the reason for taking said deposition is, and the fact is, that the said witness resides at Albany, N. Y., more than one hundred miles from Chicago, Illinois, the place where the court in which said cause is expected to be tried, is appointed by law to be held; and the reason why notice of the time and place of taking said deposition was not given to the said defendant or his counsel is, and the fact is, the said defendant
67 resides in the State of Illinois, more than one hundred miles from Albany, the place where said deposition was taken, and John M. Grimes, his counsel, resides in Chicago, Illinois, more than one hundred miles from the city of Albany aforesaid. And I do futher certify, that the said Gideon Hawley, being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says: That he resides in the city of Albany, in the State of New York; that he was 79 years old on the 26th of September, 1864; that he is one of the surviving executors of the last will and testament of William James, late of the said city of Albany, deceased; that he was well acquainted with the said William James at, and for several years previous to, his decease; that the said William James died on the 19th day of December, 1832, leaving the following named children and grandchildren, his only heirs-at-law, viz:

1st. Children: William James, junior, Augustus James,
68 Henry James, Jeannette James, then the wife of W. H. Barker, John B. James, Edward James, Catharine M. James, Ellen King James, Howard James.

2nd. Grandchildren: Mary Ann King, daughter of a deceased child of the said William James; Robert W. James and Lydia L. James, children of a deceased son of the said William James.

And this deponent further saith, that the above-named children and grand children were all personally known to him to be the children and grandchildren of the said William James, deceased, living at the time of his death; and that in order to ascertain the time of the marriage of such of them as have been married, he has consulted and referred either to the record of such times entered in the family

Bible left by the said William James, deceased, or he has consulted and referred to the pleadings in a suit prosecuted in a court
69 in the State of New York for the partition of certain lands in the city of Syracuse, in said State, and the result of such consultation and reference is a follows, viz: that the said William James, junior, was married to his wife Maria before the death of the said William James, deceased; that the said Augustus James was married to his wife Elizabeth, (now deceased,) also before the death of the said William James deceased; that the said Henry James was married to his wife Mary R. some time in the year 1840; that Jeannette Barker was married to William H. Barker on the 14th of November, 1832, which was before the decease of the said William James; that the said John B. James, now deceased, was married to his wife Mary Hellen, (now deceased,) on the 8th of October, 1834; that the said Edward James, (now deceased,) was never married; that the said Catharine M. James, (now deceased,) was married to Robert E. Temple, (also now deceased,) on the 12th day of June, 1839; that the said Ellen King James, (now deceased,) was married to [to] S. T. Van Buren on the 18th of June, 1842; that the said Howard
70 James was married to his first wife Francis, (now deceased,) on the 5th of April, 1858; that Mary Ann King, a granddaughter of the said William James, deceased, was married to Minturn Post on the 18th of September, 1844; that the said R. W. James, a grandson of the said William James, deceased, has never been married; and that the said Lydia L. James, a granddaughter of the said William James, deceased, was married to Henry Mason on the 5th of April, 1839.

And this deponent further saith, that he was a trustee of Robert E. Temple and Catharine M., his wife above named, and guardian of the estate of Howard James, also above named, and he has no doubt that he authorized his name to be used as such trustee and guardian, in the suit for the partition of lands among the heirs of the said William James, in the State of Illinois.

GIDEON HAWLEY.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed by the said Gideon Hawley in
71 my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal this 23d day of September, A. D. 1865.

[SEAL.] JAMES F. CROSBY,
Notary Public.

[5-ct. U.S. rev. stamp.]

Endorsed: "Opened Sept. 26, 1865, to learn contents.
"WM. H. BRADLEY, *Clk.*"

The plaintiff next offered the following exemplification of a record of decree from Pike county, Ill., to wit:

72 In chancery.—Pike County Circuit Court, Ills., September term, A. D. 1843.

Bill for partition.

JOHN B. JAMES and MARY ELLEN JAMES, complainants,
vs.
CATHARINE JAMES, WIDOW OF WILLIAM JAMES, formerly of the city of Albany, in the State of New York, deceased, William H. Baker, Augustus James, Elizabeth James, William James, Marcia James, Henry James, Mary W. James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple, by Gideon Hawley, their trustee, Howard James, by Gideon Hawley, his guardian, Henry Mason, Lydia L. Mason and Robert W. James, devisees and heirs of said deceased, respondents.

This day came the complainants, by their solicitor, and it appearing to the court that Ellen King Van Buren and Howard James are infants, the court orders that John Pearson be appointed guardian ad litem for said infants; and the cause now coming on to be heard, and it appearing satisfactory to the court that due legal notice had been given to all the defendants in this suit of the pendency of the
73 of the same, by publication in the "Illinois," a public newspaper printed in Jacksonville, in the county of Morgan and State of Illinois, four weeks successively, commencing on the first day of July, A. D. 1843, and ending on the 5th day of August, A. D. 1843; and the guardian ad litem for the infant defendants, having filed his answer, setting up no opposition to the granting of the prayer of said bill, and all the other defendants, although three times solemnly called, coming not, but making default and summons, having issued, in pursuance to law, for all the defendants in this suit, and there being no opposition to the prayer of the bill, it is ordered that the said bill be taken for confessed, and the case now being brought on to be heard, the court now here is satisfactorily advised that the interest of the parties named is respectively, as follows: that is to say, the interest of John B. James is six one-eleventh parts of all the lands and tenements in said bill mentioned, which lands and tenements are described, as follows, that is to say:

Adams county: The N.W. qr. 12, 2 S., 5 W.; S.E. 19, 2 S., 5 W.; N.W. 22, 3 S., 5 W.; N.W. 17, 1 S., 7 W.; N.W. 15, 2 S., 7 W.; S.E. 5, 3 S., 7 W.

Hancock: S.W. 20, 3 N., 5 W.; S.E. 13, 3 N., 6 W.; S.E. qr. 8, 5 N., 6 W.; S.W. 8, 5 N., 6 W.; S.E. 9, 6 N., 6 W.; S.W. 9, 6 N., 6 W.

Adams Co.: S.W. 32, 3 S., 7 W.; S.E. 32, 2 N., 6 W.; S. W. 8, 2 N., 7 W.; N.W. 14. 2 N.; 7 W; N.E. qr. 17; 2 W., 7 W.; 74 N.E. 20, 1 N., 8 W.; N.W. 20, 1 N., 8 W.; S.E. 28, 1 N., 8 W.; N.E. 26, 2 N., 8 W.; N.W. 26, 2 N., 8 W.; N.E. 35, 2 N., 9 W.

Bureau Co.: N.E 25, 15 N., 6 E.

Calhoun Co.: S.W. 4, 10 S, 2 W.; N.E. 18, 10 S., 2 W.; N. W. 20, 10 S., 2 W.; S.W. 13, 13 S., 2 W.; S.E. 33, 8 S., 3 W.; N.W. 1, 9 S., 3 W.

Fulton Co.: S.E. 14, 3 N., 1 E.; S.W. 5, 7 N., 1 E; S. W. 26, 8 N., 1 E.; N.W. 34, 4 N., 2 E.; S.W. 34, 4 N., 2 E.; S.W. 7, 3 N., 3 E.; S.E. 24, 5 N., 3 E.; N.E. 34, 6 N., 4 E.; N.E. 28, 7 N., 4 E.; S.W., 24, 8 N., 4 E.; S.W. 17; 7 N. 5 E.

Peoria Co.: S.W. 20, 9 N., 5 E.; N.W. 6, 6 N., 6 E.; N. E. 20, 10 N., 6 E.; N.W. 21 qr., 7 N., 7 E.; S.E. 10, 9 N., 7 E.; S.E. 28, 10 N., 7 E.; N.W. 33, 10 N., 7 E; N.E. 30, 11 N., 7 E.; S.W. 31, 9 N., 8 E.; S.E. 27, 10 N., 8 E.; S.E. 19, 11 N., 8 E.

Hancock Co.: S.W. 18, 6 N., 6 W.; S.E. 8, 7 N., 6 W.; N.W.14, 7 N., 6 W.; S E. 15, 7 N., 6 W.; N.W. 23, 3 N., 7 W.; N.E. 35, 3 N., 7 W.; S.W. 23, 4 N., 7 W.; N.W. 33, 3 N., 8 W.; N.W. 22, 6 N., 8 W.; S.E. 25, 4 N., 9 W.; N.W. 20, 10 N., 1 E.

Knox: S.E. 21, 12 N.; 1 E.; N.W. 33, 13 N., 1 E.; N.E. 28, 9 N., 2 E.; N.W. 33, 9N., 3 E.; N.W. 27, 10 N., 3 E.; S.E. 27, 9 N., 4 E.; S.W. 17, 10 N., 4 E.; S.W., 30, 10 N., 4 E.; S.E. 11, 75 13 N., 5 E.; S.E. 23, 13 N., 1 E.

McDonough Co: N. E. 10, 4 N, 1 W.; S. W. 11, 5 N, 1 W.; S. E. 27, 5 N, 1 W.; N. E. 9, 7 N, 1 W.; N. W. 9, 7 N. 1 W.; N.E. 33, 7 N. 1 W.; S. E. 4, 4 N, 2 W.; S. E. 8, 4 N, 2 W.; S.W. 8, 4 N, 2 W.; S. E. 14, 4 N, 2 W.; S. E. 24, 4 N, 2 W.; S.W. 27, 4 N, 2 W.; N. E. 6, 5 N, 2 W.; N. N. 1, 6 N, 2 W.; S. E. 10, 7 N. 2 W.; N. W. 36, 7 N, 2W.; S. W. 10, 7 N, 2 W.; N. E. 32, 4 N, 3 W.; N. W. 23, 6 N, 3 W.; N. E. 11, 7 N, 3 W.; N. W. 22, 7 N, 3 W.; S. W. 11, 4 N, 4 W.; S. E. 3, 6 N, 4 W.; S. W. 3, 6 N, 4 W.; N. W. 13, 6 N, 4 W.; N. W. 8, 7 N, 4 W.; S. W. qr., 17, 7 N, 4 W.

Mercer Co: S. W. 9, 13 N, 3 W.; S. W. 33, 13 N, 3 W.; N. E. 11, 14 N, 4 W.; S. W. 35, 14 N, 4 W.; S. E. 1, 15 N, 4 W.; N. W. 11, 14 N, 4 W.

Warren Co: N.W. 22, 8 N, 1 W.; N. W. 19, 9 N, 1 W.; N. E. 26, 9 N, 1 W.; N. W. 26, 9 N, 1 W.; N. E. 33, 9 N. 1 W.; S. W. 36, 9 N, 1 W.; S. W. 2, 10 N, 1 W.; N. E 30, 10 N, 1 W.; N. E. 11, 11 N, 1 W.; N. W. 11, 11 N, 1 W.; S. W. 5, 12 N, 1 W.; N. E. 9, 12 N, 1 W.; S. W. 28, 8 N, 2 W.; N. E. 12, 11 N, 2 W.; S. W. 17, 11 N, 2 W.; S. W. 34, 8 N, 3 W.; N. E 26, 9 N, 3 W.; S. E. 34, 10 N, 3 W.; N. W. 12, 11 N, 3 W.; S. E. 33, 8 N, 4 W.; N. W. qr. 3, 9 N, 4.; S. E. 4, 11 N, 4 W.; N. E. 11 N, 4 W.; N. W. 36, 11 N, 4 W.; S. E. 2, 12 N, 4 W.; S. W. 2, 12 N, 4 W.

Pike Co: N. W. 26, 5 S, 3 W.; N. E. 31, 5 S.; 3 W.; S. E. 3, 6 S,

The plaintiff next offered the following exemplification of a record of decree from Pike county, Ill., to wit:

72 In chancery.—Pike County Circuit Court, Ills., September term, A. D. 1843.

Bill for partition.

JOHN B. JAMES and MARY ELLEN JAMES, complainants,
vs.
CATHARINE JAMES, WIDOW OF WILLIAM JAMES, formerly of the city of Albany, in the State of New York, deceased, William H. Baker, Augustus James, Elizabeth James, William James, Marcia James, Henry James, Mary W. James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple, by Gideon Hawley, their trustee, Howard James, by Gideon Hawley, his guardian, Henry Mason, Lydia L. Mason and Robert W. James, devisees and heirs of said deceased, respondents.

This day came the complainants, by their solicitor, and it appearing to the court that Ellen King Van Buren and Howard James are infants, the court orders that John Pearson be appointed guardian ad litem for said infants; and the cause now coming on to be heard, and it appearing satisfactory to the court that due legal notice had been given to all the defendants in this suit of the pendency of the
73 of the same, by publication in the "Illinois," a public newspaper printed in Jacksonville, in the county of Morgan and State of Illinois, four weeks successively, commencing on the first day of July, A. D. 1843, and ending on the 5th day of August, A. D. 1843; and the guardian ad litem for the infant defendants, having filed his answer, setting up no opposition to the granting of the prayer of said bill, and all the other defendants, although three times solemnly called, coming not, but making default and summons, having issued, in pursuance to law, for all the defendants in this suit, and there being no opposition to the prayer of the bill, it is ordered that the said bill be taken for confessed, and the case now being brought on to be heard, the court now here is satisfactorily advised that the interest of the parties named is respectively, as follows: that is to say, the interest of John B. James is six one-eleventh parts of all the lands and tenements in said bill mentioned, which lands and tenements are described, as follows, that is to say:

Adams county: The N.W. qr. 12, 2 S., 5 W.; S.E. 19, 2 S, 5 W.; N.W. 22, 3 S., 5 W.; N.W. 17, 1 S., 7 W.; N.W. 15, 2 S., 7 W.; S.E. 5, 3 S., 7 W.

Hancock: S.W. 20, 3 N., 5 W.; S.E. 13, 3 N., 6 W.; S.E. qr. 8, 5 N., 6 W.; S.W. 8, 5 N., 6 W.; S.E. 9, 6 N., 6 W.; S.W. 9, 6 N., 6 W.

Adams Co.: S.W. 32, 3 S., 7 W.; S.E. 32, 2 N., 6 W.; S. W. 8, 2 N., 7 W.; N.W. 14. 2 N.; 7 W; N.E. qr. 17; 2 W., 7 W.;
74 N.E. 20, 1 N., 8 W.; N.W. 20, 1 N., 8 W.; S.E. 28, 1 N., 8 W.; N.E. 26, 2 N., 8 W.; N.W. 26, 2 N., 8 W.; N.E. 35, 2 N., 9 W.

Bureau Co.: N.E 25, 15 N., 6 E.

Calhoun Co.: S.W. 4, 10 S, 2 W.; N.E. 18, 10 S., 2 W.; N. W. 20, 10 S., 2 W.; S.W. 13, 13 S., 2 W.; S.E. 33, 8 S., 3 W.; N.W. 1, 9 S., 3 W.

Fulton Co.: S.E. 14, 3 N., 1 E.; S.W. 5, 7 N., 1 E; S. W. 26, 8 N., 1 E.; N.W. 34, 4 N., 2 E.; S.W. 34, 4 N., 2 E.; S.W. 7, 3 N., 3 E.; S.E. 24, 5 N., 3 E.; N.E. 34, 6 N., 4 E.; N.E. 28, 7 N., 4 E.; S.W., 24, 8 N., 4 E.; S.W. 17; 7 N. 5 E.

Peoria Co.: S.W. 20, 9 N., 5 E.; N.W. 6, 6 N., 6 E.; N. E. 20, 10 N., 6 E.; N.W. 21 qr., 7 N., 7 E.; S.E. 10, 9 N., 7 E.; S.E. 28, 10 N., 7 E.; N.W. 33, 10 N., 7 E; N.E. 30, 11 N., 7 E.; S.W. 31, 9 N., 8 E.; S.E. 27, 10 N., 8 E.; S.E. 19, 11 N., 8 E.

Hancock Co.: S.W. 18, 6 N., 6 W.; S.E. 8, 7 N., 6 W.; N.W.14, 7 N., 6 W.; S E. 15, 7 N., 6 W.; N.W. 23, 3 N., 7 W.; N.E. 35, 3 N., 7 W.; S.W. 23, 4 N., 7 W.; N.W. 33, 3 N., 8 W.; N.W. 22, 6 N., 8 W.; S.E. 25, 4 N., 9 W.; N.W. 20, 10 N., 1 E.

Knox: S.E. 21, 12 N.; 1 E.; N.W. 33, 13 N., 1 E.; N.E. 28, 9 N., 2 E.; N.W. 33, 9N., 3 E.; N.W. 27, 10 N., 3 E.; S.E. 27, 9 N., 4 E.; S.W. 17, 10 N., 4 E.; S.W., 30, 10 N., 4 E.; S.E. 11,
75 13 N., 5 E.; S.E. 23, 13 N., 1 E.

McDonough Co: N. E. 10, 4 N, 1 W.; S. W. 11, 5 N, 1 W.; S. E. 27, 5 N, 1 W.; N. E. 9, 7 N, 1 W.; N. W. 9, 7 N. 1 W.; N.E. 33, 7 N. 1 W.; S. E. 4, 4 N, 2 W.; S. E. 8, 4 N, 2 W.; S.W. 8, 4 N, 2 W.; S. E. 14, 4 N, 2 W.; S. E. 24, 4 N, 2 W.; S.W. 27, 4 N, 2 W.; N. E. 6, 5 N, 2 W.; N. N. 1, 6 N, 2 W.; S. E. 10, 7 N. 2 W.; N. W. 36, 7 N, 2W.; S. W. 10, 7 N, 2 W.; N. E. 32, 4 N, 3 W.; N. W. 23, 6 N, 3 W.; N. E. 11, 7 N, 3 W.; N. W. 22, 7 N, 3 W.; S. W. 11, 4 N, 4 W.; S. E. 3, 6 N, 4 W.; S. W. 3, 6 N, 4 W.; N. W. 13, 6 N, 4 W.; N. W. 8, 7 N, 4 W.; S. W. qr., 17, 7 N, 4 W.

Mercer Co: S. W. 9, 13 N, 3 W.; S. W. 33, 13 N, 3 W.; N. E. 11, 14 N, 4 W.; S. W. 35, 14 N, 4 W.; S. E. 1, 15 N, 4 W.; N. W. 11, 14 N, 4 W.

Warren Co: N.W. 22, 8 N, 1 W.; N. W. 19, 9 N, 1 W.; N. E. 26, 9 N, 1 W.; N. W. 26, 9 N, 1 W.; N. E. 33, 9 N. 1 W.; S. W. 36, 9 N, 1 W.; S. W. 2, 10 N, 1 W.; N. E 30, 10 N, 1 W.; N. E. 11, 11 N, 1 W.; N. W. 11, 11 N, 1 W.; S. W. 5, 12 N, 1 W.; N. E. 9, 12 N, 1 W.; S. W. 28, 8 N, 2 W.; N. E. 12, 11 N, 2 W.; S. W. 17, 11 N, 2 W.; S. W. 34, 8 N, 3 W.; N. E 26, 9 N, 3 W.; S. E. 34, 10 N, 3 W.; N. W. 12, 11 N, 3 W.; S. E. 33, 8 N, 4 W.; N. W. qr. 3, 9 N, 4.; S. E. 4, 11 N, 4 W.; N. E. 11 N, 4 W.; N. W. 36, 11 N, 4 W.; S. E. 2, 12 N, 4 W.; S. W. 2, 12 N, 4 W.

Pike Co: N. W. 26, 5 S, 3 W.; N. E. 31, 5 S.; 3 W.; S. E. 3, 6 S,

3 W.; S. E. 26, 6 S, 3 W.; N. E. 23, 7 S, 3 W.; N. W. 23, 7 S, 3 W.; N. W. 2, 3 S, 4 W.; S. W. 8, 3 S, 4 W.; S. E. 28, 3 S, 4 W.; S. W. 28, 3 S, 4 W.; S. E. 33, 6 S, 4 W.; N. E. 8, 4 S, 5 W.; S. E. 36 4 S, 5 W.; S. W. 4. 6 S. 5 W.; S. E. 5, 6 S, 5 W.; S. W. 20, 6 S, 5 W.; N. E. 22, 7 S, 5 W.; S. E. 22, 4 S, 6 W.; S. E. 26, 4 S, 6 W.; S. E. 20, 5 S, 6.; S. E. 36, 6 S, 6 W.; S. E. 12, 7 S, 6 W.; S. E. 34, 4 S, 6 W.

Putman Co: N. E. 31, 12 N, 7 E.; S. W. 3, 13 N, 7 E.; S. W 15, 13 N, 7 E.; S E. 5, 12 N, 8 E.; S. E. 11, 12 N, 8 E.; S. W. 27, 13 N, 8 E.; N. W. 28, 13 N, 8 E.; N. E. 12, 12 N, 6 E.; S. E. 19, 13 N, 6 E.; S. E. 4, 12 N, 7 E.

Scuyler Co: N. W. 20, 1 S, 1 W.; N. W. 8, 3 N, 1 W.; N. E. 22, 1 N, 2 W.; S. W. 23, 1 N, 2 W.; N. E. 7, 2 N, 2 W.; N. W. 20, 2 N, 2 W.; S. E. 28, 2 N, 2 W.; S. W. 13, 3 N, 2 W.; N. E. 17, 3 N, 2 W.; S. E. 28, 3 N, 2 W.; N. E. 4, 2 N, 1 E.

That the interest of Mary Ann King, in all the said lands and tenements is one eleventh part; that the interest of Howard
77 James in the same, is one eleventh part; that the interest of Henry Mason and Lydia L. Mason, in the right of said Lydia L. Mason, is one twenty-second part; the interest of Robert W. James in the same, is one twenty-second part; that the interest of Ellen King Van Buren, (wife of Smith T. Van Buren,) is one eleventh part, and the interest of Catharine M. Temple, (wife of Robert E. Temple,) Gideon Hawley, esq., then trustee, is one eleventh part in and to all the lands and tenements aforesaid. It is now therefore ordered and adjudged by the court, that all the said lands and tenements be divided and set off to the aforesaid persons entitled thereto, according to and in the proportions above mentioned, and that that part to be allotted to said Catharine M. Temple, be held by Gideon Hawley, esq., her trustee aforesaid, under the deed of trust in said bill set forth. Without the least prejudice, however, to any of the legal or equitable rights of the said Catharine M. and Robert E. Temple, and Robert Davis. Peter K. Stringham and Stephen R. Gray, are hereby appointed commissioners, to make partition of all the said lands and tenements, and to assign to each of said persons, entitled thereto, his or her share (according as their interest as respectively set forth) by metes and bounds, having due regard to the value of the same, and shall make report of their proceedings under their hands and seals, to the next term of this court for approval, and the cause is continued.

78 Pike County Circuit Court, Ill., April term, A. D. 1844.—In Chancery.

Petition for partition.

JOHN R. JAMES and MARY ELLEN JAMES,
vs.
CATHARINE JAMES, widow of WILLIAM James, deceased, William H. Baker, Augustus James, Elizabeth James, William James, Maria James, Henry James, Mary James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple, Catharine M. Temple, by Gideon Hawley, their trustee, Howard James, by Gideon Hawley, his guardian, Henry Mason, Lydia L. Mason, and Robert W. James.

This day came Dusenberry, the solicitor for the complainants in the above-entitled cause, and suggests the death of Robert Davis, one of the commissioners heretofore appointed by the court in the above-entitled cause, and upon such suggestion, moves the court to appoint George K. Watson, of Pike county, as such commissioner, whereupon it is ordered by the court, that said Watson be appointed as such commissioner, with full power to act under the order for partition heretofore entered in this cause instead of the said Davis, deceased.

79 Pike County Circuit Court, Ill's., September term, A. D. 1844. In Chancery.

Bill for partition.

JOHN B. JAMES and MARY ELLEN JAMES
vs.
CATHARINE JAMES and others.

This day came Duesenberry, the counsel for the complainants herein, and having stated to the court that the commissioners had not quite finished their partition, it is, on his motion, ordered by the court, that the said commissioners be permitted to file their report during vacation, having first had the same approved by the presiding judge, and that the same, when so filed and approved, be accepted and recorded as proceedings of the present term of the court.

Bill for partition.

JOHN B. JAMES & MARY ELLEN JAMES, complainants,
vs.
CATHARINE JAMES, widow of WILLIAM James, formerly of the city of Albany, in the State of New York, deceased, William H. Baker, Augustus James, Elizabeth James, William James, Marcia James, Henry James, Mary W. James, Mary Ann King, Smith T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple, and Catharine M. Temple, by Gideon Hawley, their trustee, Howard James, by Gideon Hawley, his guardian, Henry
80 Mason, Lydia L. Mason and Robert W. James, devisees and heirs of said deceased, respondents.

On this 30th day of November, A. D. 1844, in vacation, and in compliance with the order entered in this suit, at the last September term of the court, came the commissioners heretofore appointed to divide the lands in complainants' bill, set forth and filed their report, in the words and figures following, to wit:

"The report of Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners named in the annexed order, and having been heretofore duly appointed the commissioners by the Pike County Circuit Court to divide certain lands in the State of Illinois, belonging to the estate of William James, deceased, among the heirs of said deceased, we, Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners above named, now come and submit to the honorable Circuit Court of Pike County, in the State of Illinois, the following report, fully showing our action as commissioners, in compliance with our directions in the annexed order of partition, contained in the words and figures following to wit:

"Having first duly qualified ourselves as such commissioners, by taking the oath required of us by the statute in such case made and provided, (as will fully appear from reference to the affidavit hereto annexed,) we entered upon all the said land, in person, set
81 forth in said order of partition and hereinafter fully described, and examined all the said land, and appraised each tract or parcel of land, seperately by itself; and having done this, and being satisfied that all the said lands were susceptible of division without prejudice or injury to any of the owners thereof, we proceed to divide the said lands, accordingly to the directions contained in said order, into eleven different shares, or equal portions, dividing the same according to the value thereof, an accurate description of which divisions and valuations is hereto annexed, marked 'A,' and referred

to as a part of our report. We assigned, allotted, and set apart the following shares, to wit, share number three, containing the following lands, to wit:

N. W. qr. 15, 2 S., 7 W.; S. E. 33, 8 S., 3 W.; S. E. 14, 3 N., 1 E.; S. W. 23, 4 N., 7 W.; N. W. 20, 10 N., 1 E.; N. W. 27, 10 N., 3 E.; N. W. 28, 13 N., 8 E.; S. W. 9, 13 N., 3 W.; S. E. 4, 4 N., 2 W.; N. E. 11, 7 N., 3 W.; S. E. 10, 9 N., 7 E.; N. W. 2, 3 S., 4 W.; S. E. 36, 6 S., 6 W.; S. E. 28, 2 N., 2 W.; N. E. 31, 12 N. 7 E.; N. W. 11, 11 N., 1 W.; N. E. 11, 11 N., 1 W.; S. E. 4, 11 N., 4 W.

Also, share to John B. James, number six, S. W. 26, 8 N. 1 E.; N. W. 33, 13, 1 E.; N. E. 32, 4 N., 3 W.; S. W. 4, 6 S., 5 W.; S. W. 15, 13 N., 7 E.; N. E. 35, 2 N., 9 W.; S. E. 13, 3 N., 6 W.; S. W. qr. 11, 5 N., 1 W.; N. E. 20, 10 N., 6 E.; S. E. 5, 6 S., 5 W.; N. E. 30, 10 N., 1 W.; N. E. 25, 15 N., 6 E.; S. E. 9, 6 N., 6 W.; N. W. 1, 6 N., 2 W.; N. E. 8, 4 S., 5 W.; N. E. 22, 1 N., 2 W.; S. W. 28, 8 N., 2 W.

82

Also, share to John B. James, number four, S. W., 32. 3, S., 7 W.; S. W. 4, 10 S., 2 E.; S. W. 34, 8 N., 4 E.; N. W. 22, 6 N., 8 W.; S. E. 23, 13 N., 1 E.; S. W. 17, 10 N., 4 E., S. E. 11, 12 N., 8 E.; N. E. 11, 14 N., 4 W.; S. E. 9, 7 N., 1 W.; S. W. 27, 4 N., 2 W.; S. W. 20, 9 N., 5 E.; S. E. 26, 6 S., 3 W.; S. E. 34, 4 S., 6 W.; N. W. 8, 3 N., 1 W.; N. 12, 12 N., 6 E.; N. W. 19, 9 N., 1 W.; N. W. 26, 9 N., 1 W.; N. W. 3, 9 N., 4 W.

Also, share to John B. James, number seven, N. W. 17, 1 S., 7 W.; S. W. 17, 7 N., 5 E.; N. W. 23, 6 N., 3 W.; N. E. 07, 2 N., 2 W.; S. E. 34, 10 N., 3 W.; S. W. 8, 2 N., 7 W.; S. W. 9, 6 N., 6 W.; S. E. 27, 10 N., 8 E.; S. W. 17, 11 N., 2 W.; N. E. 26, 2 N., 8 W.; N W. 33, 3 N., 8 W.; N. E. 31, 5 S., 3 W.; N. E. 26, 9 N., 3 W.;

Also, to John B. James, share number nine, S. W. 13, 13 S., 2 W.; S. W. 18, 6 N., 6 W.; S. W. 11, 4 N., 4 W.; S. W. 28, 3 S., 4 W.; N. E. 11, 11 N., 4 W.; S. E. 19, 2 S., 5 W.; S. W. 34, 4 N., 2 E.; S. E. 27, 9 N., 4 E.; S. E. 3, 6 N., 4 W.; N. W. 20, 2 N., 2 W.; S. E. 28, 1 N., 8 W.; S. W. 20, 3 N., 5 W.; S. E. 14, 4 N., 2 W.; S. E. 28, 10 N., 7 E.; N. E. 12, 11 N., 2 W.

83

Also share number eleven to John B. James, S. E. 25, 4 N., 9 W.; S. W. 3, 6 N., 4 W.; S. W. 31, 9 N., 8 E.; S. W. 5, 12 N., 1 W.; N. W. 14, 2 N., 7 W.; S. E. 24, 4 N., 2 W.; N. W. 13, 6 N., 4 W.; S. E. 22, 4 S., 6 W.; S. E. 33, 8 N., 4 W.; S. E. 32, 2 N., 6 W.; S. W. 7, 3 N., 3 E.; S. E. 10, 7 N., 2 W.; S. W. 17, 7 N., 4 W.; N. W. 20, 1 S., 1 W.; S. E. 2, 12 N., 4 W.

Also, share number one to Catharine M. Temple, containing the following lands, to wit: N. W. 12, 2 S., 5 W.; S. E. 24, 5 N., 3 E.; S. E. 5, 12 N., 8 E.; N. W. 21, 7 N., 7 E.; S. W. 23, 1 N., 2 W.; N. E. 20, 1 N., 8 W.; S. E. 8, 7 N., 6 W.; S. W. 35, 14 N., 4 W.; N. W. 20, 5 S., 3 W.; S. E. 4, 12 N., 7 E.; N. W. 1, 9 S. 3 W.; N. E. 28, 9 N., 2 E.; S. W. 8, 4 N., 2 W.; N. E. 22, 7 S., 5 W.; N. W. 22, 8 N., 1 W.

Also, share number five to Howard James, containing the following lands, to wit: N. W. 22, 3 S., 5 W.; S. E. 8, 5 N., 6 W.; S. W. 9,

7 N., 1 W.; N. W. 33, 10 N., 7 E.; S. E. 26, 4 S., 6 W.; S. W. 36, 9 N., 1 W.; S. W. 2, 10 N., 1 W.; S. E. 18, 10 S., 2 W.; N. W. 33, 9 N., 3 E.; N. E. 33, 7 N., 1 W.; N. E. 23, 7 S., 3 W.; S. 13, 3 N., 2 W.; S. W. 2, 10 N., 1 W.; N. E. 28, 7 N., 4 E., S. E. 1, 15
84 N, 4 W.; N. W. 36, 7 N, 2 W.; N. W. 23, 7 S, 3 W.; S. W. 3, 13 N, 7 E.

Also share number eight to Mary Ellen King, containing the following lands, to wit: S. E. 5, 3 S, 7 W.; S. W. 8, 5 N. 6 W.; N. W. 11, 14 N, 4 W.; S. E. 19, 11 N, 8 E.; S. E. 28, 3 N, 2 W.; S. W. 2, 12 N, 4 W.; N. E. 17, 2 N, 7 W.; N. W. 14, 7 N, 6 W.; S. E. 8, 4 N, 2 W.; S. W. 20, 6 S. 5 W.; S. E. 11, 13 N., 5 E.; N. W. 34, 4 N, 2 E.; S. W. 30, 10 N, 4 E.; N. E. 6, 5 N, 2 W.; S. E. 12, 7 S, 6 W.; N. W. 36, 11 N. 4 W.

Also share number ten, to E. Ellen King Van Buren, containing the following lands, to wit: N. W. 26, 2 N, 8 W.; S. E. 15, 9 N. 6 W.; N. W. 8, 9 N, 4 W.; S. W. 8, 3 S. 4 W.; N. E. 17, 3 N, 2 W.; N. E. 9, 12 N, 1 W.; N. W. 20, 10 S. 2 W.; N. W. 23, 3 N, 7 W.; S. W. 10, 6 N. 2 W.; S. E. 28, 3 S, 4 W.; N. E. 26, 9 N, 1 W.; N. W. 13, 11 N, 3 W.; S. W. 5, 7 N, 1 E.; N. W. 22, 7 N, 3 W.; N. W. 6, 6 N, 6 E.; S. E. 33, 6 S. 4 W.; N. E. 33, 9 N, 1 W.

Also one equal half of share number second, to Lydia L. Mason, containing the following lands, to wit: N. E. 34, 6 N, 4 E.; N. E. 30, 11 N, 7 E.; S. E. 29, 5 N. 1 W.; S. W. 27, 13 N, 8 E.; S. E. 20, 5 S, 6 W.; S. E. 21, 12 N, 1 E.; S. E. 19, 13 N, 6 E.; S. E. 36,
85 4 S, 5 W.

Also one equal half of the share number second, to Robert W. James, containing the following lands, to wit: N. W. 20, 1 N. 8 W. N. E. 10, 4 N. 1 W.; N. E. 35, 3 N, 7 W.; N. E. 4, 2 N, 1 E.; S. W. 33, 13 N, 3 W.; S. E. 34, 8 N, 4 W.

As Lydia L. Mason's share amounts in value to five dollars more than Robert W. James' share, we do report that the said Lydia L. Mason pay the said Robert Robert W. James. five dollars out of her share; as share number eleven amounts to thirty dollars more than the other share, we do report that John B. James, pay out of said eleventh share two dollars and seventy-two cents to each of the shares. We do also report, at the suggestion of the counsel of the parties in this suit, we exclude from the division the southeast quarter of section three, six south, three west, the title of this peice being in controversy. We, however, value the piece of land last mentioned at one thousand dollars; all of which allotments and divisions we deem fair and equitable, and having fully complied with the requisitions contained in the order of this honorable court, we ask to be discharged. All of which is respectfully submitted by your commissioners.

P. K. STRINGHAM, [SEAL.]
S. R. GRAY, [SEAL.]
GEORGE K. WATSON, [SEAL.]
Commissioners.

86 PIKE COUNTY, ILLINOIS, *November 26th*, 1864.

Which report being examined and considered, is approved by the court; and the cause being finally and fully heard upon the bill, answers, exhibits, and report of the court, being sufficiently advised of and concerning the premises, doth order and decree and enter of record as follows, to wit: That Catharine James, widow of William James, deceased, having previously to the commencement of this suit fully relinquished all of her right of dower in all the said lands and tenements and premises described in the complainants bill herein filed, be, and hereby is, forever debarred of and from all right of dower in the same. It is hereby further ordered and adjudged by the court, and hereby entered of record, that in accordance with the said report, John B. James receive and hold the following shares allotted to him by the commissioners, to wit: shares number three, four, six, seven, nine, and eleven, and all the lands in these shares so allotted to him contained. It is further ordered and adjudged by the court, and hereby entered of record, that Catharine M. Temple, receive (to be held in trust without prejudice to any of the legal or equitable rights of the said Catharine M., or any other person, by Gideon Hawley, esq., by virtue of the deed of trust executed to him herein filed,) share number one allotted to her by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and is hereby entered of record, that Howard

87 James receive share number five allotted to him by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and is hereby entered of record, that Mary Ann King, receive share number eight, allotted to her by the commissioners, and all the lands thereunto contained. It is further ordered and adjudged by the court, and it is hereby entered of record, that Ellen King Van Buren, receive share number ten allotted to her by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and hereby entered of record, that Lydia L. Mason, receive the equal one half of share number two allotted to her by the commissioners, and all the lands contained in this half so assigned to her. It is further ordered and adjudged by the court, and is hereby entered of record, that Robert W. James, receive the other one equal half of share number two as assigned to him by the commissioners, and all the lands contained in this half of share number two. It is further ordered and adjudged by the court, that as Lydia M. Mason's half share of said lot number two amounts in value to five dollars more than the half share assigned to said Robert W. James, the said Lydia, L. Mason pay to said Robert W. James, two dollars and fifty cents out of her share; and that as share number eleven amounts to thirty dollars more than the other shares, that John B. James pay out of said eleventh share two dollars and seventy-two cents to each of the other shares. It is further

88 ordered, adjudged, and decreed by the court, and the same is hereby entered of record, that the assignments, allotments, and partition made by the commissioners, as reported by them between the parties be, and hereby are, ratified and confirmed, and that all the

parties herein shall be bound and concluded by the same, and that the estate assigned and allotted to each shall be held by the persons to whom the same is allotted in severalty, according to the division made of the same, each respectively to hold the estate assigned and allotted them in fee-simple, and in lieu of all the respective rights and interests which they respectively immediately previous to this partition enjoyed in common in all the said lands and premises. It is further ordered and adjudged by the court, that the parties to whom the said allottments have been made pay the costs, charges, and expenses of this suit, in the following proportions, to wit: that the said John B. James pay the six eleventh parts thereof, that Catherine M. Temple pay one eleventh part thereof, that Howard James pay one eleventh part thereof, that Mary Ann King pay the one-eleventh part thereof, that Ellen King Van Buren pay the one-eleventh part thereof, that Lydia L. Mason pay one-twenty-second part thereof, and that Robert W. James pay one-twenty-second part of all the costs, charges and expenses of this suit.

89 Pike County Circuit Court, Ill's, September term, A. D. 1845.—In Chancery.

Petition for partition.

JOHN B. JAMES and wife
against
CATHARINE JAMES and others.

This day came the complainants, by their solicitor, and enter a motion to amend the record herein.

Bill for partition.

JOHN B. JAMES & MARY ELLEN JAMES,
against
CATHARINE JAMES, widow of WILLIAM JAMES, formerly of the city of Albany, in the State of New York, deceased, William H. Baker, Augustus James, Elizabeth James, William James, Marcia James, Henry James, Mary W. James, Mary Ann King Smith, T. Van Buren, Ellen King Van Buren, Edward James, Robert E. Temple and Catharine M. Temple, by Gideon Hawley, their trustee, Howard James, by Gideon Hawley, his guardian, Henry Mason, Lydia L. Mason, and Robert W. James, devisees and heirs of said deceased

It being suggested to the court that it is doubtful whether the former orders of this court allowing the commissioners to

90 present their report to the judge in vacation, and his approval thereof also in vacation, were regular, the court orders that this cause be reinstated on the docket, and the report of the commissioners being now produced and filed in open court, in the words and figures following, to wit:

The report of Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners named in the annexed order, and having been heretofore duly appointed the commissioners by the Pike county Circuit Court to divide certain lands in the State of Illinois, belonging to the estate of William James, deceased, among the heirs of said deceased, we, Peter K. Stringham, Stephen R. Gray, and George K. Watson, the commissioners above named, now come and submit to the honerable Circuit Court of Pike county, in the State of Illinois, the following report, fully showing our action as commissioners in compliance with our directions in the annexed order of partition, contained in the words and figures following, to wit: Having first duly qualified ourselves as such commissioners, by taking the oath acquired of us by the statute in such case made and provided, as will more fully appear from reference to the affidavit herein filed, we entered upon all the said lands in person, set forth in said order of partition, and hereinafter fully described, and examined all the said lands and appraised the value of each tract or parcel of land separately by itself, and having done this, and being satisfied that all

91 the said lands were susceptible of division without prejudice or injury to any of the owners thereof, we proceeded to divide the said lands, according to the directions contained in said order, into eleven different shares or equal partitions, dividing the same according to the value thereof, an accurate description of which divisions and valuations is hereto annexed, marked Schedule "A," and referred to, as part of our report.

We assigned, allotted and apportioned out the said lands to each as follows, to wit, to John B. James, in lieu of all his rights and estate in all the said lands and premises, we assigned, allotted and set apart the following shares, to wit, share number three, containing the following lands, to wit:

Northwest quarter of fifteen, town 2, S. 7 W.; S. E. 33, 8 S., 3 W.; S. E. 14, 3 N., 1 E.; S. W. 23, 4 N., 7 W.; N, W. 20, 10 N., 1 E.; N. W. 27, 10 N., 3 E.; N. W. 28, 13 N., 8 E.; S. W. 9, 13 N., 3 E.; S. E. 4, 4 N., 2 W.; N. E. 11, 7 N., 3 W.; S. E. 10, 9 N., 7 E.; N. W. 2, 3 S., 4 W.; S. E. 36, 6 S., 6 W.; S. E. 28, 2 N., 2 W.; N. E. 31, 12 N, 7 E.; N. W. 11, 11 N., 1 W.; N. E. 11, 11 N., 1 W.; S. E. 4, 11 N., 4 W.

92 Also share to John B. James, number four, S. W. 32, 3 S., 7 W.; S. W. 4, 10 S., 2 W; S. W. 34, 8 N., 4 E.; N. W. 22, 6 N., 8 W.; S. E. 23, 13 N., 1 E.; S. W. 17, 10 N., 4 E.; S. E. 11, 12 N., 8 E.; N. E. 11, 14 N., 4 W.; S. E. 9, 7 N., 1 W.; S. W. 27, 4 N., 2 E.; S. W. 20, 9 N., 5 E.; S. E. 26, 6 S., 3 W.; S. E. 34, 4 S., 6 W.; N. W. 8, 3 N., 1 W.; N. E. 12, 12 N., 6 E.; N. W, 19, 9 N., 1 W.; N. W. 26, 9 N., 1 W.; N. W. 3, 9 N., 4 W.

Also share to John B. James, No. six, N. E. 35, 2 N., 9 W.; N. E.

25, 15 N., 6 E.; S. W. 26, 8 N., 1 E.; S. E. 13, 3 N., 6 W.; S. E. 9, 6 N., 6 W.; N. W. 33, 13 N., 1 E.; S. W. 11, 5 N., 1 W.; N. W. 01, 6 N., 2 W.; N. E. 32, 4 N., 3 W.; N. E. 20, 10 N., 6 E.; N. E. 8, 4 S., 5 W.; S. W. 4, 6 S., 5 W.; S. E. 5, 6 S., 5 W.; N. E. 22, 1 N., 2 W.; S. W. 15, 13 N., 7 E.; N. E. 30, 10 N., 1 W.; S. W. 28, 8 N., 2 W.

Also share to John B. James, number seven, N. W. 17, 1 S., 7 W.; S. W. 17, 7 N., 5 E.; N. W. 23, 6 N., 3 W.; N. E. 7, 2 N., 2 W.; S. E. 34, 10 N., 3 W.; S. W. 8, 2 N., 7 W.; S. W. 9, 6 N., 6 W.; S. E. 27, 10 N., 8 E.; S. W. 17, 11 N., 2 W.; N. E. 26, 2 N., 8 W.; N. W. 33 3 N., 8 W.; N. E. 31, 5 S., 3 W.; N. E. 26, 9 N., 3 W.;

Also to John B. James share No. nine, S. W. 13, 13 S., 2 W.; S. W. 18, 6 N., 6 W.; S. W. 11, 4 N., 4 W.; S. W. 28, 3 S., 4
93 W.; N. E. 11, 11 N., 4 W.; S. E. 19, 2 S., 5 W.; S. W. 34, 4 N., 2 E.; S. E. 27, 9 N., 4. E.; S. E. 3, 6 N., 4 W.; N. W. 20, 2 N., 2 W.; S. E. 28, 1 N., 8 W.; S. W. 20, 3 N., 5 W.; S. E. 14, 4 N., 2 W.; S. E. 28, 10 N., 7 E.; N. E. 12, 11 N., 2 W.

Also share number eleven to John B. James, S. E. 25, 4 N., 9 W.; S. W. 3, 6 N., 4 W.; S. W. 31, 9 N., 8 E.; S. W. 5, 12 N., 1 W.; N. W. 14, 2 N., 7 W.; S. E. 24, 4 N., 2 W.; N. W. 13, 6 N., 4 W.; S. E. 22, 4 S., 6 W.; S. E. 33, 8 N., 4 W.; S. E. 32, 2 N., 6 W.; S. W. 7, 3 N., 3 E.; S. E. 10, 7 N., 2 W.; S. W. 17, 7 N., 4 W.; N. W. 20, 1 S., 1 W.; S. E. 2, 12 N., 4 W.

Also share No. one to Catharine M. Temple, containing the following lands, to wit: N. W. 12, 2 S., 5 W.; S. E. 24, 5 N., 3 E.; S. E. 5, 12 N., 8 E.; N. W. 21, 7 N., 7 E.; S. W. 23, 1 N., 2 W.; N. E. 20, 1 N., 8 W.; S. E. 8, 7 N., 6 W.; S. W. 35, 14 N., 4 W.; N. W. 20, 5 S., 3 W.; S. E. 4, 12 N., 7 E.; N. W. 1, 9 S., 3 W.; N. E. 28, 9 N., 2 E.; S. W. 8, 4 N., 2 W.; N. E. 22, 7 S., 5 W.; N. W. 22, 8 N., 1 W.

Also share No. 5 to Howard James, containing the following lands, to wit: N. W. 22, 3 S., 5 W.; S. E. 8, 5 N., 6 W.; S. W. 9, 7 N., 1 W.; N. W. 33, 10 N., 7 E.; S. E. 26, 4 S., 6 W.; S. W. 36
94 9 N., 1 W.; S. E. 18, 10 S., 2 W.; N. W. 33, 9 N., 3 E.; N. E. 33, 7 N., 1 W.; N. E. 23, 7 S., 3 W.; S. W. 13, 3 N., 2 W.; S. W. 2, 10 N., 1 W.; N. E. 28, 7 N., 4 E.; S. E. 1, 15 N., 4 W.; N. W. 36, 7 N., 2 W.; N. W. 23, 7 S., 3 W.; S. W. 3, 13 N., 7 E.

Also share number eight to Mary Ann King, containing the following lands, to wit: S. E. 5, 3 S., 7 W.; S. W. 8, 5 N., 6 W.; N. W. 11, 14 N., 4 W.; S. E. 19, 11 N., 8 E.; S. E. 28, 3 N., 2 W.; S. W. 2, 12 N., 4 W.; N. E. 17, 2 N., 7 W.; N. W. 14, 7 N., 6 W.; N. W. 34, 4 N., 2 E.; S. W. 30, 10 N., 4 E.; S. E. 8, 4 N., 2 W.; S. W. 20, 6 S., 5 W.; S. E. 11, 13 N., 5 E.; N. E. 6, 5 N., 2 W.; S. E. 12, 7 S., 6 W., N. W. 36, 11 N., 4 W.

Also one equal half of the share number second to Lydia L. Mason, containing the following lands, to wit: N. E. 34, 6 N., 4 E.; N. E. 30, 11 N., 7 E.; S. E. 29, 5 N., 1 W.; S. W. 27, 13 N., 8 E.; S. E. 20, 5 S., 6 W.; S. E. 21, 12 N., 1 E.; S. E. 19, 13 N., 6 E.; S. E. 36, 4 S., 5 W.

Also share number ten to Ellen King Van Buren, containing the following lands, to wit: N. W. 26, 2 N., 8 W.; S. E. 15, 9 N., 6 W.; N. W. 8, 9 N., 4 W.; S. W. 8, 3 S., 4 W.; N. E. 17, 3 N , 2 W.; N. E. 9, 12 N., 1 W.; N. W. 20, 10 S., 2 W.; N. W. 23, 3 N., 7 W.; S. W. 10, 7 N., 2 W.; S. E. 28, 3 S., 4 W.; N. E. 26, 9 N., 1
95 W.; N. W. 12, 11 N., 3 W.; S. W. 5, 7 N., 1 E.; N. W. 22, 7. N., 1 W.; N. W. 6, 6 N., 6 E.; S. E. 33, 6 S., 4 W.; N. E. 33, 9 N. 1 W.

Also one equal half of the share number second to Robert W. James, containing the following lands, to wit: N. W. 20, 1 N., 8 W.; N. E. 10, 4 N., 1 W.; N. E. 35, 3 N., 7 W.; N. E. 4, 2 N., 1 E.; S. W. 33, 13 N., 3 W.; S E. 34, 8 N., 4 W.

As Lydia L. Mason's share amounts in value to five dollars more than Robert W. James' share, we do report that the said Lydia L. Mason pay to the said Robert W. James five dollars out of her share. As share number eleven amounts to thirty dollars more than the other shares, we do report that John B. James pay out of said eleventh share two dollars and seventy-two cents to each of the other shares. We do also report, that at the suggestion of the counsel for the parties in this suit, we exclude from the division the southeast quarter of section three, six south, three west, in Pike county, the title to this peice being in controversy; we, however, value the peice of land last mentioned at one thousand dollars.

All of which allottments and divisions we deem fair and equitable, and having fully complied the requisitions contained in the order of this honorable court, we ask to be discharged, all of which is
96 respectfully submitted by your commissioners.

[SEAL.] P. K. STRINGHAM.
[SEAL.] S. R. GRAY.
[SEAL.] GEORGE K. WATSON.

PIKE COUNTY, ILLINOIS, *November 26th, A. D.*, 1844.

And it is suggested to the court now here, by the counsel for the complainants, and satisfactorily appears by due proof produced by him, that by a decree of the Court of Chancery of the State of New York, made by the assistant vice-chancellor of the first circuit, on the sixth day of May, 1844, and a further decree made by the said court on the 20th day of June, 1844, and in a cause pending in said court, in which the said Robert E. Temple was complainant, and the said Catherine Margaret, wife of the said Robert E. Temple, and the issue of the marriage of the said Robert and Catharine, were defendants, the said court having jurisdiction in the premises, and copies of which decrees are here produced; that the trust deed made in contemplation of the marriage between the said Robert E. Temple and and Catherine Margaret, his wife, bearing date the eleventh day of June, in the year of our Lord one thousand eight hundred and thirty-nine, and referred to in the bill of complaint in this cause, was set aside as to the real estate therein mentioned, on the execution of a proper deed of settlement of the real estate of said Catherine
97 Margaret, which she had on the fourth day of June, 1839, or

at any time since, which new deed of settlement was subsequently executed in due form under the direction and with the approval of said court; and under the said decree of the 20th day of June, 1844, deed, by way of further assurance, and in confirmation thereof, were also executed as required by said decree copies, of which several deeds are now produced to this court, by means whereof the said trust deed bearing date the eleventh day of June, 1839, was set aside and vacated as to the real estate therein described; and it also appearing that the interest of the said Catharine Margaret Temple, in and to the real estate in Illinois, of which partition is sought in this cause, are not included or conveyed by the new trust deed so executed under the decree of the Court of Chancery, as aforesaid, and that the said Catherine Margaret Temple therefore stands seized in fee in her own right of one eleventh part of the lands and real estate, of which partition is sought in this cause, and is entitled absolutely to the share of the lands allotted to her in and [and] by the aforesaid report of the said commissioners, it is therefore ordered and decreed, that the said share be allotted and assigned to her accordingly, and that the said Gideon Hawley, as trustee, under the said deed bearing date the eleventh day of June, 1839, be, and he is hereby, discharged from all liability and responsibility under the same, as to the said real estate so allotted and assigned to the said Catharine Margaret; and it is further suggested to the court now here, and satisfactorily appears, that the defendant, Mary
98 Ann King, on the eighteenth day of September, 1844, intermarried with Mintown Post, of the city of New York, in the State of New York, and is now his wife. It is therefore ordered, that the said Mintown Post be made a defendant to this suit, and that the same proceed against him and his said wife by the names of Mintown Post and Mary Ann, his wife, late Mary Ann King; and it is further suggested to the court now here, and satisfactorily appears, that the defendants, Henry Mason and Lydia L., his wife, by indenture bearing date the first day of October, 1844, a copy of which is now produced, granted, sold, and conveyed all their right and interest, and the right and interest of the said Lydia, being the one twenty-second part of, in, and to the premises of which partition is sought in this cause to the defendant, Augustus James. It is therefore ordered, that the portion of said premises which fell to the share of the said Lydia L. Mason, on the division thereof by the said commissioners, as appears by their report, be assigned and allotted to the said Augustus James. And it is also ordered, that the said complainants be at liberty at any time hereafter nunc pro tunc, if advised that the same is necessary, to file a supplemental bill in due form, setting the new matters now entered upon the record, as aforesaid, or to place any other or further evidence of the same on file. And the said report of the commissioners being read and examined by the court, and due deliberation being had upon the same, and the
99 several matters aforesaid, it is now ordered and decreed, and this court, by virtue of the authority therein vested, doth order and decree, that the said report be, and the same is hereby,

confirmed, except so far as the same is affected by the matters above suggested on record. And it is further ordered, adjudged, and decreed, that Catharine James, widow of William James, deceased, having, previously to the commencement of this suit, fully relinquished all of her right of dower in all the said lands and tenements and premises described in the complainants' bill herein filed, be, and is hereby, forever barred of and from all right of dower in the same. It is further ordered and adjudged by the court, and hereby entered of record, that, in accordance with the said report, John B. James receive, take, and hold, in severalty, the following shares allotted to him by the commissioners, to wit: Shares numbers three, four, six, seven, nine, and eleven, and all the lands in those shares so allotted to him contained. It is further ordered and adjudged by the court, and hereby entered of record, that Catharine M. Temple receive, take, and hold, in severalty, share number one, allotted to her by the commissioners, and all the lands therein contained; and it is further ordered and adjudged by the court, and is hereby entered of record, that Howard James receive, take, and hold, in severalty, share numbered five, allotted to him by the commismissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and is hereby entered of record,
100 that Mary Ann Post, late Mary Ann King, wife of Minturn Post, receive, take, and hold, in severalty, share number eight, allotted to her by the commissioners and all the lands therein contained.

It is further ordered and adjudged by the court, and is hereby entered of record, that Ellen King Van Buren, wife of Smith T. Van Buren, receive, take, and hold, in severalty, share number ten, allotted to her by the commissioners, and all the lands therein contained. It is further ordered and adjudged by the court, and is hereby entered of record, that Augustus James receive, take, and hold, in severalty, the one equal half of share number two, as divided and allotted to Lydia L. Mason by the commissioners, and transferred to the said Augustus James by deed, as above mentioned, and all the lands contained in this half of lot number two. It is further ordered and adjudged by the court, and is hereby entered of record, that Robert W. James receive, take, and hold, in severalty the other one half of share nnmber two, as assigned to him by the commissioners, and all the lands contained in this half of lot number two. It is further ordered and adjudged by the court, that as Augustus James, half share of said share number two, so allotted to him as aforesaid,
101 amounts in value to ten dollars more than the half share assigned to said Robert W. James the said Augustus James pay to said Robert W. James five dollars for equality of partition; and that as share eleven amounts to thirty dollars more than each of the other shares that said John B. James pay out of said eleventh share two dollars and seventy-two cents to each of the other shares. It is further ordered adjudged and decreed by the court, and the same is hereby entered of record, that the assignments, allottments, and partition made by the commissioners, as reported by them between the

parties, and above modified be, and they are hereby, ratified and confirmed, and that all the parties herein shall be bound and concluded by the same, and that the estate assigned and allotted to each shall be held in severalty, according to the division made of the same, each respectively to hold the estate assigned and allotted to him or her in manner aforesaid, in fee-simple, and in lieu of all the respective rights and interests which they respectively imme to this partition enjoyed in common in all the said lands and premises.

It is further ordered and adjudged by the court, that the
102 parties to whom the said allottments have made pay the costs, charges and expenses of this suit in the following proportions, to wit: that said John B. James pay the six-eleventh parts thereof, that Catherine M. Temple pay one-eleventh part thereof, that Howard James pay one-eleventh part thereof, that Mary Ann Post, late Mary Ann King, pay one-eleventh part thereof, that Ellen King Van Buren pay one-eleventh part thereof, that Augustus James pay one-twenty-second part thereof, and that Robert W. James pay one-twenty-second part of all the costs, expenses, and charges of this suit; and it appearing from the report of the said commissioners that the S. E. quarter of section three, six south, three west, in Pike county, was excluded by them from said division the title being in controversy. It is now ordered that said suit be continued in court as to the said parcel of land so excluded until the title thereto shall have been finally determined, so as to enable any party interested at any time hereafter, is necessary, to apply for a partition or division of said premises, or a sale thereof, as may be most beneficial to all the parties concerned.

103 STATE OF ILLINOIS, *County of Pike:*

I, George W. Jones, clerk of the Circuit Court within and for said county, certify that the foregoing and attached 34 pages contain a complete and correct copy of the proceedings, decrees, reports, &c., in the case of John B. James *et al. vs.* Catherine James *et al.* as fully as the same appears of record in my office, and that the same are duly recorded in volume 1, of Chancery Records, pages 179 to 182, 195, 227, 263 to 268, 317, 320 to 327.

Given under my hand and the seal of said court at my office, in Pittsfield, this 12th day of October, A. D. 1861.

[COURT SEAL.] GEO. W. JONES,
Clerk.

104 To the introduction of which the defendant then and there objected because the same did not show jurisdiction in Pike county Circuit Court, Ill's, of the persons and subject matter, which objection, was then and there overruled, to which decision the defendant then and there excepted, and said exemplification was read in evidence.

Plaintiff next read in evidence the deposition of Mason Cogswell, as follows:

Be it remembered, that on application of James Dexter, executor of John B. James, deceased, the plaintiff in a suit now pending in

the Circuit Court of the United States for the eighth circuit and northern district of Illinois, wherein Henry Carpenter is defendant, I, Edward Wade, a notary public in and for the State of New York, (duly appointed and sworn, and dwelling in the city of Albany,) have this twentieth day of September, A. D. 1864, at number 13, Washington avenue, in the city of Albany, and State aforesaid, without having given notice to the said defendant, or his counsel, proceeded to examine Mason F. Cogswell, de bene esse, as a witness on behalf of the plaintiff in the aforesaid suit; and I certify that the
105 reason for taking said deposition is, and the fact is, that the said witness resides at No. 13, Washington avenue, in the city of Albany, in the State of New York, more than one hundred miles from Chicago, Illinois, the place where the court in which said cause is expected to be tried is appointed by law to be held; and the reason why notice of the time and place of taking said deposition was not given to the said defendant or his counsel is, and the facts is, the said defendant resides in the State of Illinois, more than one hundred miles from Albany, New York, the place where said deposition was taken, and said defendant has no counsel who resides within one hundred miles from Albany aforesaid. And I do further certify that the said Mason F. Cogswell being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says:

My name is Mason F. Cogswell, I reside in the city and county of Albany, in the State of New York. My business is that of practicing physician and surgeon, and I have been in that business in
106 said city of Albany for about thirty years. I am well and personally acquainted with the plaintiff in this suit, Mr. James Dexter, and was, in the lifetime of John B. James, well and personally acquainted with the said John B. James, whose last will and testament, the said plaintiff, James Dexter, is the executor of. At the time of the death of said John B. James, I had been so acquainted with said James some fifteen or twenty years. I have been informed that the said John B. James died at the city of Chicago, in the State of Illinois, on the twenty-second day of May, in the year eighteen hundred and fifty-six; that within a few days of the said 22nd day of May, 1856, the remains of the said John B. James was brought on to the said city of Albany, the late residence of the said James. Soon after the said remains arrived at said city of Albany, I personally examined the same, and found them to be that of the said James. I knew that said James died about the said 22d of May, 1856, from my having personally seen his said remains as I have before stated.
107 I examined said remains at the late residence of said John B. James, at No. 43 north Pearl street, in the said city of Albany. I also personally attended the funeral of the said John B. James, which occurred a few days after his said death in May, 1856.

MASON F. COGSWELL.

And I do further certify, that the preceeding deposition was reduced to writing by me, and signed by the said Mason F. Cogswell,

in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal this 20th day of September, A. D. 1864.

[SEAL.] EDWARD WADE,
Notary Public in and for the State of New York.

[5-cent U. S. revenue stamp.]

Endorsed: "Opened Oct. 5, 1864, for Goudy & Chandler. Wm. H. Bradley, clerk."

108 The plaintiff next offered in evidence what purported to be an exemplification of the last will and testament of John B. James, the probate thereof, and letters testamentary, as follows:

109 *The last will and testament of John B. James, proved and recorded May 29th, 1856, as a will of both real and personal estate.*

I, John B. James, of the city of Albany, in the State of New York, do make this my last will and testament.

I give and devise all my estate, real and personal, whereof I may die seized and possessed, to James Dexter, esquire, of the city of Albany, to have and to hold the same to himself, for the uses and trusts following:

In trust to pay all my funeral expenses, and debts not secured by liens upon my estate, but justly due by me, out of the income of said estate, as soon after my decease and burial as may be.

Secondly. To arrange for the final payment of such debts as shall exist at the time of my death, and for which mortgages or other liens upon my property, real or personal, shall be found, in the manner following, to wit: An inventory of my estate shall be taken by my said trustee, and such parts thereof as are unproductive of income shall be sold and the proceeds invested in good securities or real estate, according to the best judgment of my said trustee. He shall then set aside from the income of said estate enough to
110 yield annually the full interest upon the debt, with one thousand dollars per annum in addition to such amount of interest, to be applied to the liquidation of the debt.

The balance of the income of my estate, after paying the expenses chargeable upon the management of the estate, shall be equally divided annually between my two children, viz: John V. James and Mary Helen James, and applied by my said trustee to their use during the life of the said John V. James and Mary Helen James. If either of my said children shall die without lawful issue, then the survivor shall receive the whole of such income as is directed to be divided between them. But in case of the death of the said John V. James and Mary Helen James, without lawful issue, I give, devise, and bequeath my estate to the children of my deceased sister, Catharine M. Temple. In case of the death of the said John

V. James or Mary Helen James, leaving lawful issue, I give and devise my estate to such issue, the issue of each party to receive one-half of such estate. If one of my said children should die without lawful issue, and the survivor of my said children should have lawful issue, then to such issue, at the death of said survivor, I give, devise, and bequeath my estate.

JOHN B. JAMES.

111 The above instrument was dated the 25th day of July, 1855, subscribed by the above-named John B. James in our presence, who, at his request, and in his presence, and in the presence of each other, then subscribed our names as witnesses thereto, the said John B. James at the time declaring the same to be his last will and testament.

H. Q. LANSING, *of the city of Albany.*
J. M. LOVETT, *of the city of Albany.*

COUNTY OF ALBANY, *ss:*

Henry Q. Lansing and Joseph M. Lovett, of the city and county of Albany, being duly sworn in open court, do depose and say, and each for himself deposeth and saith: That he is a subscribing witness to the instrument now shown to him, purporting to be the last will and testament of John B. James, of the city of Albany, in the county of Albany; that the said John B. James did, in the presence of this deponent, subscribe his name at the end of the instrument which is now shown and exhibited to this deponent as aforesaid, and which purports to be the last will and testament of the said John B. James, and which bears date on the 23d day of July, in the year of Lord one thousand eight hundred and fifty-five.

112 And this deponent further saith, that the said John B. James, the said testator, did, at the said time of subscribing his name, as aforesaid, at the end of the said will, declare the said instrument so subscribed and now exhibited, to be his last will and testament; and this deponent did thereupon subscribe his name at the end of the said will as an attesting witness thereto, and at the request of the said testator. And this deponent further saith, that at the said time, when the said testator subscribed his name to the said last will, as aforesaid, and at the time of the deponent's subscribing his name as an attesting witness thereto, as aforesaid, the said John B. James was of sound mind and memory, of full age to execute a will, and was not under any restraint, to the knowledge, information, or belief of this deponent.

And further these deponents saith not.

H. Q. LANSING.
J. M. LOVETT.

Sworn and subscribed this 27th day of May, 1856, before me.
J. A. McKOWN, *Surrogate.*

ALBANY COUNTY, *Surrogate's Court, ss* :

I, J. A. McKown, surrogate of the county of Albany, do hereby certify the foregoing to be a true copy and record of the last will and testament of John B. James, deceased, propounded for
113 probate, and proved before me as a will, relating to both real and personal estate, and the proofs and examinations taken in relation thereto.

J. A. McKOWN, *Surrogate.*

In the matter of proving the last will and testament of John B. James, dec'd.

On reading and filing the petition of James Dexter, an exeeutor or trustee named in the last will and testament of the above-named John B. James, dec'd, propounding the said last will for probate, and also on reading and filing the consent of E. H. Merrihew, the special gaurdian of John V., and Mary Helen James, minors, and the only persons interested in the probate of said will, that said will be immediately proven without the issuing and service of the usual citation and waiving the same; and proceedings were therepon had that the proofs were duly taken, and the allegations of the parties appearing having been heard and due consideration being thereupon had, it is ordered adjudged and decreed, that the instrument in writing offered for probate in this matter is the last will and testament of the
114 said testator; that the same was duly executed, and as such is valid as a will of both real and personal estate, and as such the same is now admitted to probate and of record, and said proofs, &c., taken on the said last will as aforesaid are ordered to be recorded.

The people of the State of New York, by the grace of God, free and independent, to all to whom these presents shall come, or may concern, send greeting:

Know ye, that at the city of Albany, in the county of Albany, on the 27th day of May, in the year of our Lord one thousand eight hundred sixty-four, before J. A. McKown, surrogate of our said county, the last will and testament of John B. James, deceased, was proved, and is now approved, and allowed of by us, and the said deceased having, whilst he lived, and at the time of his death, goods, chattels, or credits within this State, by means whereof the proving and registering the said will, and granting administration of all and singular the said goods, chattels, and chattels, and also the auditing, allowing, and final discharging the account thereof, doth belong to us the administration of all and singular the goods and credits of the said deceased, and any way concerning his will is granted unto James Dexter, executor, trustee in the said will
115 named, he having first taken and subscribed an oath before the said surrogate, faithfully and honestly to discharge the duties of such executor or trustee, hereby requiring you, the said James Dexter, to make, or cause to be made, a true and perfect

inventory of all and singular the goods, chattels and credits of the said deceased, which have, or shall come to your hands, possession or knowledge; as also to make, or cause to be made, duplicates of such inventory, and cause the same to be signed by the appraisers, and the same so made and signed that you make return thereof to the surrogate of the said county within three months from the date hereof.

In testimony whereof, we have caused the seal of office of our said surrogate to be hereunto affixed. Witness J. A. McKown, esquire, surrogate of the said county, at the city of Albany, in the said county on the thirty-first day of May, in the year of our Lord one thousand eight hundred and fifty-six.

[L. S.] J. A. McKOWN, *Surrogate.*

116 STATE OF NEW YORK,
County of Albany, ss:

I, Isral Lawton, surrogate, of the city and county of Albany, and in the State of New York, do hereby certify, that the foregoing is a true and complete transcript and exemplification of the last will and testament of John B. James, late of said county, deceased, and the probate thereof, with the letters testamentary issued thereon, as the same appears and remains of record in my office.

And I do further certify, that said will and testament was duly executed and proved agreeably, and in conformity, with the laws of said State of New York; and I being the presiding officer and judge of said surrogate court, in said State of New York, and Albany county, in whose hands the said records are deposited, and authorized by the laws of said State to grant exemplifications thereof, do further certify that this attestation is in due form.

In testimony whereof, I have hereunto caused the seal of office of said surrogate court to be hereto affixed. Witness my hand this 29th day of September, 1864.

[SURROGATE'S SEAL.] ISRAEL LAWTON,
Surrogate.

[5-ct. int rev. stamp, cancelled.]

117 To the introduction of which in evidence, and the proof thereof of the same, being the last will and testament of John B. James, and also to the proof that the same was the last will and testament of John B. James, the defendant then and there objected; also objected that the proper certificates were not attached thereto to prove the same; that in fact the same was not properly certified, but each of said objections were then and there overruled, and defendant then and there excepted.

The plaintiff here rested.

Whereupon the defendant to maintain the issues on his part, offered and read in evidence a certified copy of a patent from the United States to William T. Davenport for the land in controversy, as follows, to wit:

23,927.

James Monroe, President of the United States of America, to all whom these presents shall come, greeting:

Know ye, that in pursuance of the acts of Congress, appropriating and granting land to the late army of the United States, passed on and since the sixth day of May, 1812, William T. Davenport, having deposited in the General Land Office, a warrant in his favor, numbered 16,918, there is granted unto the said William T. Davenport, late a private in Leonard's company of light artillery, a certain tract of land, containing one hundred and sixty acres, being the north-east quarter of section twenty-five, of township fifteen, north, in range six east, in the tract appropriated (by the acts aforesaid) for military bounties in the Territory of Illinois; to have and to hold the said quarter section of land, with the appurtenances thereof, unto
118 the said William T. Davenport, and to his heirs and assigns forever.

In testimony whereof I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this twenty-seventh day of May, in the year of our Lord, one thousand eight hundred and eighteen, and of the independence of the United States of America the forty second.

By the President.

[L. S.] JAMES MONROE.

JOSIAH MEIGS,

Commissioner of the General Land Office.

Recorded vol. 25, page 177.

ALBANY, *August* 6, 1818.

I this day assign and deliver to Ephr'm De Witt this, my bounty land patent, having conveyed to him the lands therein set forth.

WILLIAM T. DAVENPORT.

STATE OF ILLINOIS, *Beureau County, ss:*

120 I, Henry F. Royce, clerk of Circuit Court, and ex-officio recorder, within and for said county, in the State aforesaid, do hereby certify that the above and foregoing is a true and correct copy of a patent from the United States to William T. Davenport, which patent was filed for record December the 11, 1861, and recorded in book 34, page 306, of the records of Bureau county, now in my office.

Witness my hand and the seal of said court at my office, in the city of Princeton, this 17th day of December, 1864.

[SEAL.] HENRY F. ROYCE, *Clerk.*

[5 ct. rev. stamp cancelled]

And the defendant then offered a certified copy of a deed from said William T. Davenport, to Ephraim D Witt, which was read in evidence without objection, as follows, to wit:

23,928.

Know all men by these presents that I, William T. Davenport of Albany, in the State of New York, for and in consideration of seventy-five dollars, current money of the United States, to me in hand paid, by Eph. De Witt, of the city and State aforesaid,
121 merchant, at or before the ensealing and delivery of these presents, the receipt whereof I do hereby acknowledge, do by these presents give, grant, bargain, sell, convey, transfer, set over, and confirm unto the said Ephraim De Witt, his heirs and assigns, forever, a certain tract of land containing one hundred and sixty acres, being the northeast quarter of section twenty-five, township fifteen, north of range six east, in the tract appropriated by acts of Congress, for military bounties in the Illinois Territory, reference being had to the patent issued by the President of the United States, in the name of me, the said William T. Davenport, and I have voluntarily delivered to the said Eph. DeWitt, to have and to hold the said quarter section of land, and the patent, with the privileges and appurtenances thereof, to the said Eph. DeWitt, his heirs and assigns, to and for his and their own proper use and behoof forever; and I do covenant with the said Eph. De Witt, his heirs and assigns, that I am lawfully seized in fee of the premises; that they are free of all incumbrances; that I have good right to sell and convey the same unto the said Eph DeWitt, and that I will forever warrant and defend the same unto the
122 said Eph. DeWitt, his heirs and assigns, against the lawful claims and demands of all persons.

In testimony whereof I have hereunto set my hand and seal this sixth day of August, in the year of our Lord one thousand eight hundred and eighteen.

[L. S.] WILLIAM T. DAVENPORT.

Signed, sealed, and delivered in presence of—
ELIPHALET HAWLEY.
ESTES HOWE.

STATE OF NEW YORK, *Albany County, ss:*

Be it remembered, that on this sixth day of August, in the year of our Lord one thousand eight hundred and eighteen, before me came the within-named William T. Davenport, to me well known, and acknowledged the signing and sealing of the within deed of conveyance for the uses and purposes therein expressed, all of which I hereby certify according to law, and allow the same to be recorded.

ESTES HOWE,
Judge Albany Com. Pleas, Counseller and ex-officio, performing the duties of a Judge of the Supreme Court at Chambers.

123 STATE OF NEW YORK,
City and County of Albany, ss:

CLERK'S OFFICE.

I, Robert Babcock, clerk of the said county, and also clerk of the Supreme Court and Mayor's Courts, being Courts of Record, held therein, do hereby certify that Estes Howe, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument in writing, and endorsed thereon, was, at the time of taking such proof or acknowledgement, a county judge in and for the county aforesaid, dwelling in the said county, and duly authorized to take the same; and that I am well acquainted with the handwriting of the said judge, and verily believe that the signature to the said certificate of proof or acknowledgement is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed my official seal, as county clerk and clerk of the said courts this 2 day of Feb'y, 1861.

[SEAL.] ROB'T BABCOCK, *Clerk.*

124 STATE OF ILLINOIS, *Bureau County, ss:*

I, Henry F. Royce, clerk of the Circuit Court, and ex officio recorder within and for said county, in the State aforesaid, do hereby certify that the above is a true and correct copy of a deed, acknowledgement and cetificate between the parties therein named, which deed was filed for record December 19, 1861, and duly recorded in book 34, page 307, in the records of Bureau county, now in my office.

Witness my hand and official seal, at Princeton, this 17th day of December, A. D. 1864.

[SEAL.] HENRY F. ROYCE, *Clerk.*

[Revenue stamp 5 cts. cancelled]

The defendant next offered certified copy of a deed from William James to Levi Beber, as follows, to wit:

27,644.

Know all men by these presents that I, William James, of the city and county of Albany, and State of New York, for and in
125 consideration of fifteen hundred dollars, current money of the United States, to me truly paid, on and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey and confirm unto Levi Bebee, of Greenbush, Renselaer county, State of New York, his heirs and assigns forever, the following tracts or parcels of land, lying and being in the Illinois military land district, which quantity of land is more fully described by the following sections, numbers, and ranges: The northeast qu'r of section thirty, eleven north, in range seven east; also, the northeast qr. of section nine, twelve north, one west; also, the northwest quarter of section thirty-three, township nine north,

in range three east; also, the southwest qr. of section thirty, ten north, range four east; also, the northwest qr. of section twenty-two, seven north, range three west; also, the northwest qr. of section three, nine north, range four west; also, the northeast qr. of section twenty-five, fifteen north, range six east; also, the southwest qr. of section two, twelve north, range four west; also,
126 the northwest qr. of section thirteen, six north, range four west; also, the northwest qr. of section five, seven north, range one east; also, the northeast qr. of section thirty-two, four north, range three west; also, the southeast qr. of section twenty-four, five north, range three east; also, the southwest qr. of section thirty-five, fourteen north, range four west; also, the southeast qr. of section thirty-two, two north, range six west; also, the northwest qr. of section thirty-three, ten north, in range seven east; also, the northwest qr. of section twenty-two, six north, range eight west; also, the southeast qr. of section twenty-seven, five north, range one west; also, the northeast qr. of section six, five north, range two west; also, the southeast qr. of section twenty-seven, nine north, range four east; also, the south half of section eight, four north, range two west; also, the southeast qr. of section thirty-four, eight north, range three west; also, the northwest qr. of section thirty-six, nine north, range four west; also, the north half of section
127 eleven, eleven north, range one west; also, the southeast qr. of section four, four north, range two west; also, the southeast qr. of section thirty-four, ten north, range three west; also, the northeast qr. of section twenty-six, nine north, range three west; also, the northeast qr. of section thirty-three, seven north, range one west; also, the northeast qr. of section twenty-three, seven south, range three west; also, the southeast qr. section eight, seven north, range six west; also, the south half of section eight, five north, range six west; also, the north half of section eleven, fourteen north, range four west; also, the southeast qr. of section one, fifteen north, range four west; also, the northwest qr. of section eight, seven north, range four west; also, the southwest qr. of section eighteen, six north, range six west; also the south half section two, twelve north, in range four west; also, the southeast qr. of section nineteen, thirteen north, range six east; also, the north half of section twelve, eleven north, range three west.

To have and to hold all the aforesaid described tracts of
128 land, and every part and parcel thereof, with all the appurtenances and privileges thereunto belonging, to him, the said Levi Bebee, his heirs and assigns, for his or their own proper use, benefit and behoof, and to and for no other use, interest, or purpose whatever.

And I, the said William James, for myself, my heirs, executors, and administrators, do covenant, promise, and agree to and with the said Levi Bebee, his heirs and assigns, that I am now the true, lawful and rightful owner of all and singular the above mentioned lands, and that he, the said Levi Bebee, his heirs and assigns, shall and may, at all times, forever hereafter, peaceably and quietly, have, hold

occupy, possess and enjoy all and singular the lands hereby bargained, sold, transferred and conveyed, without the lawful let, suit, trouble, hinderance, molestation, interruption, eviction, or disturbance of me, the said William James, or my heirs or assigns, or any other persons whatsoever; and that I and my heirs, and all and every person or persons, and his and their heirs, lawfully
129 claiming any estate, right, title, or interest of, in, and to the said lands herein described, by, from, and under me, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the request, and at the proper costs and charges in the law, of the said Levi Bebee, his heirs and assigns, make, do sign, seal, and execute, or cause, or procure to be made, done, signed, sealed and executed, all and every further and lawful act or acts, thing or things, device or devices, conveyance or conveyances, assurance or assurances, in the law, whatsoever, for the further, better, and more perfect granting, conveying, releasing, confirming, and assuring the premises aforesaid unto the said Levi Bebee, his heirs and assigns, and to his or their proper use and behoof forever, according to the true intent and meaning of the presents, and to and for no other use, intent or purpose whatsoever. And I do hereby authorize and irrevocably empower the said Levi Bebee, his heirs and assigns, to take possession of the aforesaid described tracts of land,
130 either in my name, or his, or their name or names, as may be deemed best calculated to secure to him, the said Levi Bebee, and his heirs forever, the peaceable enjoyment thereof.

In witness of all the foregoing, I, the said William James, hereunto affix my hand and seal, at the city of Albany, and State of New York, this thirteenth day of October, in the year of our Lord one thousand eight hundred and nineteen.

[SEAL.] WILLIAM JAMES.

Signed, sealed, and delivered in presence of—
JACOB DOWNING.
ESTES HOWE.

STATE OF NEW YORK, *Albany County*:

Be it remembered, that on the thirteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, came before me one William James, who is to me well known as party grantor of the within deed, and who in person acknowledged that he had signed, sealed, and delivered the same, as his free act and deed, for the uses and purposes therein expressed, and of which I
131 certify according to law, and allow the same to be recorded.

[NO SEAL] ESTES HOWE,
Judge Albany County Common Pleas, Counsellor and ex-officio, performing the duties of a Judge of Supreme Court and Chambers.

Recorded Sept. 30th, 1862.

STATE OF ILLINOIS, *Warren County, ss*:

I, William Laferty, clerk of the Circuit Court, ex-officio Recorder in and for the said Co., in the State aforesaid, do hereby certify that the within foregoing is a true, perfect, and complete copy of a deed from Wm. James to Levi Beebe, conveying the lands therein named, as the same appears recorded in my office, in vol. 37 of deeds, pages 141, 142 and 143, Warren Co., Land Records, Ills.

Witness my hand and the seal of s'd court, at my office, in the city of Monmouth, this 12th day of December, A. D. 1863.

[SEAL.] WM. LAFERTY, *Clerk.*
By L. O. TOURTLEOTT, *Dep'y.*

[5 ct. stamp.]

STATE OF ILLINOIS, *Warren County, ss*:

A. H. Griffith, being duly sworn on his oath, says: That
132 some time in the year A. D. 1861, this affiant was employed as the att'y of John B. Strong, att'y in fact for the heirs of Ephriam Dewitt, and as such att'y had full access to all of the papers of said Strong; that, in prosecuting the titles of said Dewitt, said Strong, in the month of Sept. A. D. 1862, brought to the office of this affiant a deed from Wm. James to Levi Bebee, the date of which said deed this affiant does not now recollect, but as he verily believes, the same as the copy hereto attached, certified from the recorder's office of Warren Co., Illinois; that said deed was taken out of said recorder's office by this affiant, on the second day of October, A. D. 1862; and this affiant further says, that from the appearance of said deed, which was for some time in his office, he verily believes that the same was an ancient instrument. It had the appearance of having been executed as this affiant, as early as the date it purported to have been executed; that this affiant professed to be an expert in judging of the genuineness of such instruments, having given almost his exclusive attention to real estate law, and the trial of eject-
133 ment suits, both in the U. S. Circuit Court and the State Courts, for the last seven years; and this affiant further states, that both from his memory and from the entry of the recorder in the entry book, in his office, that he left such deed in said office of the recorder, on or about the 30th day of Sept. A. D. 1862; and further this affiant saith not.

A. H. GRIFFITH.

(This affidavit attached to the deed, was not offered, or to intended to be offered, in evidence with the deed or otherwise, but was inadvertently copied herein.)

WM. H. BRADLEY, *Cl'k.*

Subscribed and sworn to before me this 12th day of December, A. D. 1863.

[SEAL.] WM. LAFERTY,
Clerk Circuit Court of Warren Co., Ill's.
By LEO TOURTELLOTT,
Dep'y.

[Revenue five cents.]

27,644.

STATE OF ILLINOIS, *County of Bureau, ss:*

I, Henry F. Royce, clerk of the Circuit Court and ex-officio recorder in and for said county and State, do hereby certify, that the writing hereunto attached is a correct copy of a deed recorded in my office, in book 41, of deeds on page 41, filed for record, October 17th, 1864, at 2 o'clock, p. m.

134 Witness my hand and the seal of said court, at Princeton, in said county, this 30th day of May, A. D. 1866.

HENRY F. ROYCE,
Clerk and Recorder.

[5-ct. U. S. rev. stamp.]

135 To which the plaintiff objected, because it was not properly acknowledged, because it was a copy of a copy of a deed recorded in Warren county, and that the copy filed for record in Bureau county was not made by any official person, but the court overruled the objection and allowed the same to be read, which was done, and to which the plaintiffs then and there excepted. The defendant next offered in evidence the defendant as a witness, who, being duly sworn, testified that he bought the land in controversy, in 1861, and received a deed therefor, and that he received no other title papers relating to said land, and never had in his possession, or under his control, any of the title papers relating to said land, and never knew where they were, and cannot find the same.

The defendant next offered and read in evidence a certified copy of a deed from Levi Bebee to Ephriam De Witt, as follows, to wit:

136 23,998.

Know all men by these presents, that I, Levi Beebe, formerly of Greenbush, Renseller county, State of New York, do, for and in consideration of one dollar to me in hand paid by Ephriam D'Witt, of the city of Albany, and State aforesaid, the receipt whereof is hereby confessed, do, by these presents, acknowledge to have sold and conveyed unto the said Ephraim De Witt, his heirs and assigns, forever, all my right, title, interest, claim, or demand, of, in, or to a certain list of lands situated in the military tract, in the State of Illinois, and known by the following numbers:

The south half of section 24, township 13 north, range 3 east.

Northwest qr. 24, 12 north, range 4 east; northeast 25, 13 north, range 2 west; northwest qr. 28, 10 north, range 2 east; southwest qr. 23, 6 north, range 3 west; northeast qr. 7, 10 north, range 1 east; southeast qr. 27, 13 north, range 6 east; northwest qr. 2, 9 north, 4 east; southeast qr. 22, 8 north, 4 east; southeast qr. 2, 9 north, 2 west; southeast qr. 18, 7 north, 4 east; southwest qr. 5, 1 north, 6 west; northwest qr. 12, 3 north, 8 west; southeast qr. 31,

137 2 south, 8 west; northeast qr. 21, 3 south, 7 west; northeast qr. 15, 1 south, range 5 west; north half 34, 6 south, range 4

west; southeast qr. 17, 9 north, 4 west; northeast qr. 1, 7 north, 6 east; southeast qr. 12, 8 north, 2 west; south half 15, 13 north, 1 west; northeast qr. 9, 5 north, 7 west; southwest qr. 24, 1 north, 6 west; southeast qr. 25, 15 north, 7 east; southeast qr. 18, 11 north, 4 east; southwest qr. 1, 15 north, 4 west; southeast qr. 33, 8 north, 2 west; northwest qr. 33, 15 north, 4 west; southeast qr. 1, 2 south, 9 west; northeast 20, 2 south, 5 west; northeast 28, 6 south, 5 west; northeast 8, 7 north, 6 west; southwest 29, 7 north, 6 west; southwest qr. 27, 15 north, 7 east; northeast qr. 25, 4 north, 4 west; southeast 21, 7 south, 3 west; southeast 15, 13 north, 4 west; southeast 2, 9 north, 2 east; northeast 9, 3 north, 3 east; north half 22, 8 north, 2 west; southeast 17, 10 north, 3 west; northeast 18, 10 north, 4 west; together with all other tracts in which I may be interested in said State of Illinois. I having acquired my title through the aid and advice of William James, of Albany City, who furnished the numbers and information for the investing of the title in me, and I having learned that said lands were legally the property of Ephraim De Witt, by conveyance from the several patents, which is also a consideration for the conveyance to him, the said Ephraim De Witt, to have and to hold the above conveyed premises with all the privileges thereunto belonging, unto the said Ephraim De Witt, his heirs and assigns forever, and I do, by these presents, engage for myself my heirs and assigns to warrant and defend the above-conveyed premises against all lawful claims, by, through, or under me.

138

In testimony of which I have hereunto set my hand and seal this first day of November, in the year of our Lord one thousand eight hundred and twenty-two.

[SEAL.] LEVI BEEBE.

In presence of—
DAVID SMITH.
JOHN KERR.

139 STATE OF OHIO, *Franklin County, ss:*

I do hereby certify that the within-named conveyor, who is to me known personally, and who acknowledged that he signed and sealed the within deed as his voluntary act, and desires that the same may be recorded.

Given under my hand this first day of November. in the year of our Lord one thousand eight hundred and twenty-two.

JOHN KERR,
Judge of Common Pleas, County of Franklin.

STATE OF OHIO, *Franklin County ss:*

Be it remembered, that John Kerr, whose name appears to the taking of the above acknowledgement, was duly appointed a judge by Allen Trimble, Governor of the State of Ohio, on the 29th day of

October, 1822, and of the independence of the United States the 47th.

Given under my hand and the great seal of the State Nov. 1st, 1822.

[L. S.] JNO. McLEAN,
Secretary of State.

140 STATE OF ILLINOIS,
Bureau County, ss:

I, George M. Radcliffe, clerk of the Circuit Court and ex officio recorder within and for the county and State aforesaid, do hereby certify that the above is a correct copy of deed and acknowledgement between the parties, and on the land therein named, which deed was filed for record in my office, January 17th, 1862, and recorded in Book 34, of deeds, page 359.

In testimony whereof, I have hereunto set my hand and the seal of said court, at my office, in Princeton, this 26th day of January, A. D. 1863.

[SEAL.] GEO. M. RADCLIFFE, *Cl'k,*
By C. C. MASON, *Deputy.*

[10-cent U. S. revenue stamp.]

141 The defendant next offered a certified copy of a power of attorney from J. V. A. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles E. De Witt, A. F. Smith, Elizabeth De Witt Smith, Catherine De Witt Johnson, heirs-at-law of Ephriam De Witt, deceased, to Ephriam H. De Witt, without objection, it being admitted that the above-named grantors are the heirs of Ephriam De Witt, and that Ephriam De Witt is dead, as follows, to wit:

Whereas, Ephriam De Witt, formerly of the city and county of Albany, State of New York, died in Jersey City, State of New Jersey, on the nineteenth day of January, A. D. 1842, leaving at the time of his decease, and him surviving, his widow, Ann, since deceased, and the following named children, his heirs-at-law, viz: Jacob V. L. De Witt, Charles E. De Witt, Ephriam H. De Witt, James R. De Witt, Maria De Witt, Catherine De Witt, now the widow of Ralph Johnson, Elizabeth De Witt, wife of Albert T. Smith, and Julia C. De Witt, all of whom are now of full age; and whereas, the said Ephriam

142 De Witt was, at the time of his decease, the owner of, and interested in, certain lands lying and being in the State of Illinois:

Now, therefore, know all men by these presents, that we, the said Jacob V. L. De Witt, residing at Pittston, county of Luzerne, in the State of Pennsylvania; and Ephriam H. De Witt, of the city of Albany, State of New York; and James R. De Witt, Maria De Witt, Julia C. De Witt, Albert T. Smith, and Elizabeth De Witt Smith, his wife, and Catharine De Witt Johnson, widow of Ralph Johnson, all of Jersey City, in the State of New Jersey, have made, constituted, and appointed, and by these presents do make, constitute, and appoint the said Ephriam H. De Witt, of Albany, New York, our true and

lawful attorney for us, and in our names, places, and stead, to enter into and upon, and to take possession of, the quarter-sections of land lying and being in McDonough county, in the State of Illinois, and known and distinguished as the northeast quarter of section six, of township five north, range two west; and the northeast quarter of section thirty-two, of township four north, range three west; and also of any and all other tracts and parcels of land and real estate whatever, or wheresoever located in said State of Illinois,
143 belonging to, or in which the said Ephriam De Witt was in any way interested at the time of his said decease, and whether standing in the name of said Ephriam De Witt, or otherwise, and to or in which we are, or may be, in any way entitled or interested as the heirs or representatives of said Ephriam De Witt, and to grant, bargain, and sell the same, or any part or parcel thereof, for such sum or price, and on such terms, as to him shall seem meet; and for us, and in our names. to make, execute, acknowledge, and deliver good and sufficient deeds and conveyances for the same, either with or without covenants and warranty, and until the sale thereof; to let and demise the said lands, or any part or portion thereof, for the best rent that can be procured for the same; and to ask, demand, recover, and receive all sums of money which shall become due and owing to us by means of such bargainr and sale, or lease and demise, giving and granting unto our said attorney full power and authority to do and peform all and every act and
144 thing whatsoever, requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of revocation and substitution, hereby ratifying and confirming all that our said attorney, or his substitute, shall lawfully do, or cause to be done, by virtue hereof; also hereby ratifying and confirming any lease or leases which our said attorney, or any person heretofore appointed, or hereafter to be appointed by him, may have heretofore made, or any portion of said lands.

In witness whereof, we have hereunto set our hands and seals the thirty-first day of July, A. D. 1856.

G. V. L. DE WITT.	[SEAL.]
JAMES R. DE WITT.	[SEAL.]
MARIA DE WITT.	[SEAL.]
JULIA C. DE WITT.	[SEAL.]
CHARLES E. DE WITT.	[SEAL.]
A. T. SMITH.	[SEAL.]
ELIZABETH DE WITT SMITH.	[SEAL.]
CATHRINE DE WITT JOHNSON.	[SEAL.]

Sealed and delivered in presence of witnesses to signature of J. V. L. De Witt—

C. F. BOWMAN,
WINTHROP W. KETCHUM.

As to James R. De Witt, Maria De Witt, Julia C. De Witt, and Charles E. De Witt,

GEORGE W. CASSEDY.

As to the same parties whose signatures were witnessed by George W. Cassedy,

ADDIN DE WITT CASSEDY.

145 As to A. T. Smith, Elizabeth De Witt Smith, and Catherine De Witt Johnson,

GEORGE W. CASSEDY.

As to A. T. Smith, Elizabeth De Witt Smith, and Catherine De Witt Johnson,

ADDIN DE WITT CASSEDY.

STATE OF PENNSYLVANIA, *Luzerne County, ss:*

Be it remembered, that on this thirty-first day of July, A. D. one thousand eight hundred and fifty-six, before me, Winthrop W. Ketchum, a notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, and legally qualified to take acknowledgments of powers of attorneys, &c., residing in the borough of Wilkes Barre, in said county, personally came the within-named J. V. L. De Witt, and in my presence executed the within power of attorney, and acknowledged the same to be his own free act and deed for the purposes therein mentioned, and desired that the same might be recorded as such according to law.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above mentioned.

[SEAL.] WINTHROP W. KETCHAM,
Notary Public.

146 STATE OF NEW JERSEY,
Jersey City, in the County of Hudson, ss:

Be it remembered, that on this first day of August, in the year of our Lord one thousand eight hundred and fifty-six, in the city and county aforesaid, before me, George W. Cassedy, a commissioner, residing in said city, duly appointed a commissioner by the governor of the State of Illinois, to take the acknowledgement and proof of the execution of deeds and other instruments in writing, under seal, to be used or recorded in said State, personally appeared James R. De Witt, Maria De Witt, Julia C. De Witt, and Charles E. De Witt, who are personally known to me to be the persons whose names are subscribed to the foregoing power of attorney, as having executed the same, and acknowledged that they had executed the same for the uses and purposes therein expressed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, as commissioner of the said State of Illinois, at my office, in the city of Jersey City, and State aforesaid, this
147 first day of August, A. D. eighteen hundred and fifty-six.

[SEAL.] GEO. W. CASSEDY,
Commissioner of the State of Illinois for the city of Jersey City, in the State of New Jersey.

STATE OF NEW JERSEY,
Jersey City, in the County of Hudson:

Be it remembered, that on the second day of August, in the year of our Lord one thousand eight hundred and fifty-six, in said city and county, before me, George W. Cassedy, a commissioner, resident in said city, duly appointed and commissioned by the governor of the State of Illinois, to take the acknowledgement and proof of the execution of deeds and other instruments in writing, under seal, to be used or recorded in said State of Illinois, personally appeared Albert T. Smith and Elizabeth De Witt Smith, his wife, and Catharine De Witt Johnson, who are personally known to me to be the persons whose names are subscribed to the foregoing power of attorney, as having executed the same, and acknowledged that they had executed
148 the same for the uses and purposes therein expressed. And the said Elizabeth De Witt Smith, wife of the said Albert T. Smith, being of lawful age, and having been by me, separate and apart from her husband, examined, and the contents of the said power of attorney having been fully made known and explained to her, acknowledged that she had executed the same voluntarily and freely, and without compulsion of her husband, and that she does not wish to retract.

In witness whereof, I have hereunto set my hand and affixed my official seal, as commissioner of the said State of Illinois, at my office, in the city of Jersey City, and State aforesaid, this second day of August, A. D. eighteen hundred and fifty-six.

[SEAL.] GEO. W. CASSEDY,
Commissioner of the State of Illinois,
for the city of Jersey City, N. J.

In the acknowledgment immediately preceding this memorandum, the name "Catharine De Witt Johnson," with the preceding word "and," were interlined and inserted by me, before the signing
149 by me of the above certificate.

GEO. W. CASSEDY,
Commissioner for Illinois.

STATE OF ILLINOIS, *McDonough County, ss*:

I, William T. Head, clerk of the Circuit Court, and ex-officio recorder of said county, do hereby certify that the foregoing is a true and correct copy of a certain power of attorney, duly recorded in the records of said county, in book "G" of mortgages.

Witness my hand and the seal of said court, at Macon, this fourth day of November, A. D. 1859.

[SEAL.] W. T. HEAD, *Cl'k.*,
By R. W. SMITH, *Dep'ty.*

Endorsed: "Copy." Heirs of Ephm. De Witt, deceased, to Ephraim H. De Witt. 7,521. Power of Attorney. State of Illinois, Bureau county, *ss*. Filed for record June 29th, 1861, at 11 o'clock a. m., and duly recorded in book "N" of mortgages, on page 76, 77 & 78, and examined. Geo. M. Radcliffe, Recorder.

150 The defendant next offered and read in evidence, without objection, a certified copy of a power of attorney from said Ephraim H. De Witt to John B. Strong, as follows, to wit:

Know all men by these presents, that I, Ephraim H. De Witt, of the city and county of Albany, and State of New York, one of the heirs-at-law and legal representatives of Ephraim De Witt, dec'd., by my own right, and by virtue of a power of attorney, with full power of substitution, given to me by the other heirs-at-law of the said Ephraim De Witt, dec'd., have made, constituted, and appointed, and by these presents do make, constitute, and appoint, John B. Strong, of the city of Tiffin, county of Senaca, and State of Ohio, my true and lawful attorney, for me, and in my name, place, and stead, to enter into and take possession of all lands belonging to me and the other heirs of Ephraim De Witt, dec'd., situate in the State of Illinois, and to grant, bargain, sell, convey, and confirm, the whole, or any part thereof, for such price or sum of money, or on such terms as he may think best, and for me, and in my name, to make,
151 execute, acknowledge, and deliver unto the purchaser or purchasers thereof, such deeds of conveyances as he may think best, and to demand, receive, and collect, all sums of money which shall become due and payable to me, by reason of such sale or sales, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever, requisite and necessary to be done, in and about the premises, as full, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney, or his substitute, shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this fourteenth day of August, Anno Domini, 1856.

[L. S.] E. H. DE WITT.

In presence of—

STATE OF ILLINOIS, *County of Knox, ss:*

I, T. A. E. Holcomb, a notary public for the town of Galesburg, in said county and State, do hereby certify that E. H. De Witt, whose name appers signed to the foregoing instrument or power of attorney, and who is personally known to me, to be the identical
152 person whose name is subscribed to said instrument [instrument] as having executed the same, and acknowledged the same as his voluntary act and deed, for the uses and purposes therein expressed.

Given under my hand and notarial seal this fourteenth day of August, one thousand eight hundred and fifty-six.

[SEAL] T. A. E. HOLCOMB,
Notary Public.

STATE OF ILLINOIS, *McDonough County, ss:*

I, William T. Head, clerk of the Circuit Court and ex-officio recorder of said county, do hereby certify that the foregoing is a true and correct copy of a certain power of attorney duly recorded in book "G" of mortgages, on pages 517 and 518 of the records of said county.

Witness my hand and the seal of said court, at Macomb, this third day of November, A. D. 1859.

[SEAL.] W. T. HEAD, *Cl'k.*
By R. W. SMITH, *Dep'ty.*

Endorsed: "Copy 75,22 Ephraim H. DeWitt to John B.
153 Strong, power of attorney, State of Illinois. Bureau county, *ss:* Filed for record, June 29th, 1861, at 11 o'clock, a. m, and duly recorded in book "N" of mortgages on page 78 and 79, and examined.

GEO. M. RADCLIFFE, *Recorder.*"

It was agreed between the parties that the statutes of New York and of Ohio were to be considered as evidence, but need not be inserted in this bill of exceptions.

The defendant next offered and read in evidence without objection a deed from the said heirs of Ephraim De Witt, deceased, by John
B. Strong, their att'y to the defendant as follows, to wit:
154 This indenture, made this 22d day of July, in the year of our Lord one thousand eight hundred and sixty-one, between Jacob V. L. De Witt, James R. De Witt, Charles E. De Witt, Ephriam H. De Witt, Albert T. Smith, Elizabeth De Witt Smith, Catherine De Witt Johnson, Maria De Witt, Julia C. De Witt, sole heirs-at-law of Ephriam De Witt, deceased, by John B. Strong, attorney of the first part, and Henry Carpenter, of Bureau county, State of Illinois, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of twelve hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have granted, bargained, sold, remised, released, aliened, and confirmed, and by these presents do grant, bargain, sell, remise, release, alien, and confirm unto the said party of the second part, and to his heirs and assigns, forever, all of the following described premises, situate, lying and being in the county of Bureau and State of Illinois, and known as the northeast quarter of section twenty-five, (25) township fifteen (15) north, in range
155 six (6) east, containing one hundred and sixty acres more or less. Power of attorney recorded in book "N" of mortgages, pages 76, 77, 78, and 79, Bureau county, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, or demand whatsoever of the said party of the first part, either in law or equity, of, in, and to the above

bargained premises, with the hereditaments and appurtenances. To have and to hold the said premises above bargained and described, with the appurtenances, unto the said party of the second part, his heirs and assigns, forever. And the said parties of the first part above written, by their said attorney, John B. Strong, for their heirs, executors, and administrators, do covenant, bargain and agree, to and with the said party of the second part, his heirs and assigns, that at the time of the ensealing and delivery of these presents, the said parties above written, as the sole heirs-at-law of Ephriam Dewitt, are well seized of the premises above conveyed, as of a good, sure, perfect, absolute, and indefeasible estate of inheritance in the law in fee-simple, and have good right, full power and lawful authority
156 to grant, bargain, sell and convey the same in manner and form aforesaid, and that the same are free and clear of all former and other grants, bargains, sales, liens, judgments, taxes, assessments, and incumbrances of what kind or nature soever, and the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming, or to claim, the whole or any part thereof, shall and will warrant and forever defend.

In witness whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JACOB V. L. DEWITT. [SEAL.]
JAMES R. DEWITT. [SEAL.]
CHARLES E. DEWITT. [SEAL.]
EPHRIAM H. DEWITT. [SEAL.]
ALBERT T. SMITH. [SEAL.]
ELIZABETH DEWITT SMITH. [SEAL.]
CATHRINE DEWITT JOHNSON. [SEAL.]
MARIA DEWITT. [SEAL.]
JULIA C. DEWITT. [SEAL.]

By their attorney in fact JOHN B. STRONG.

Signed, sealed and delivered in presence of—

_____ _____

_____ _____

STATE OF ILLINOIS, *Henry County, ss*:

157 I, John I. Bennett, notary public in and for said county, in the State aforesaid, do hereby certify, that John B. Strong, who is to me personally known as the same person whose name is subscribed to the annexed deed, appeared before me this day in person, and acknowledged that he had signed, sealed, and delivered the said instrument of writing as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this 22d day of July, A. D. 1861.

[SEAL.] JOHN T. BENNETT, *Notary Public.*

Endorsed: "N. E. 25, 15, 6 east. Heirs of Ephriam Dewitt. By J. B. Strong, att'y. To Henry Carpenter, deed. State of Illinois,

Bureau county, *ss*: This deed was filed for record, this 19th day of Feb'y, 1862, at 12 m., and duly recorded in book '32' of deeds, on page 604, and examined. Geo. M. Radcliffe, recorder. Paid, 24,098."

158 The defendant next offered an exemplified copy and proof of the [of the] last will and testament of the said William James, to the reading of which the plaintiff did then and there object, because not properly authenticated, and said objection was reserved, and said defendant read the same in evidence, subject to the objection, which said wil, lproof, &c., is as follows, to wit:

159 *The last Will and Testament of William James.—Proved and recorded January 23d*, 1833.

[1.]

The last will and testament of William James, esquire, of the city of Albany.

I, William James, in contemplation of the uncertainty of human life, and being desirous of making a just disposition of my property, do make and publish this my last will and testiment, in manner following, that is to say:

I give and devise to my wife, Catharine James, the mansion-house now occupied as such by me, in the city of Albany, together with all the appurtenances thereunto belonging, during the period of her natural life, and with power to dispose of the same by will to our lineal descendants in such manner as she may think proper.

I also give and bequeath to my said wife, all my household furniture and utensils, including plate, pictures, and other ornamental articles in the house, her personal ornaments and wearing apparel; also my horses, harness, carriages, and sleighs, and my library.

160 Desiring that my family, after my decease, should live respectably, but at the same time prudently and circumspectly, I further give, desire, and bequeath unto my said wife, for her own support, and for the education and support of our children, an annuity of three thousand dollars, to be paid in equal quarterly payments, or oftener, should she have occasions therefor, during the period of her natural life.

I also give and bequeath unto my said wife the sum of three thousand dollars, to be applied by her towards the [2] maintenance, education, and advancement of the children of her deceased sister, Jannette, B. Gourley, in such proportion, and at such times, as she may deem proper.

The foregoing devise and bequests to my said wife are intended to be, and I hereby declare them to be, in lieu and full satisfaction of her dower in my estate.

To my son, William James, I give and bequeath an annuity of two thousand dollars during his natural life.

To my son, Henry, I give and bequeath an annuity of twelve hundred and fifty dollars during his natural life.

To Catharine Tillman, sister of my former wife, Elizabeth, deceased, I give and bequeath an annuity of one hundred and
161 twenty-five dollars during her natural life.

To Charlotte James, daughter of my deceased brother, John James, I give and bequeath an annuity of one hundred dollars during her natural life.

To Susan Duffey, widow of John Duffy, late of the city of New York, deceased, I give and bequeath an annuity of two hundred dollars during her natural life.

To my nephew, John James, son of my deceased brother, John James, I give and bequeath the sum of one thousand dollars.

I give and bequeath to the "Society for the relief of orphan and destitute children in the city of Albany," an annuity of one hundred and fifty dollars, to be paid by my trus- [3] tees, hereinafter named, to the managers of said society for the use thereof, annually, until my said trustees shall find it convenient, out of the rents and profits of my estate, to invest the sum of two thousand five hundred dollars in some public stock, which I require them to do at some period of the trust hereinafter created, and the stock so purchased shall thereupon be assigned in perpetuity to the said managers, subject however to such limitations and conditions not inconsistent with the object of this bequest, as my said trustees shall prescribe.

162 The foregoing legacy to my nephew, John James, shall be paid by my said trustees within the period of fifteen months after my decease; and the legacy of three thousand dollars to my wife, for the benefit of the children of her deceased sister, Mrs. Gourley, shall be paid in such proportions and at such times as she may desire, and in the event of her death, before the whole is paid, then I order and direct that so much as shall remain unpaid shall be faithfully applied by my said trustees, to the purposes for which it is designed, according to their discretion.

The said specific legacies, and foregoing annuities are not to be considered as charges upon my real estate, but are to be paid by my trustees, hereinafter named, out of the rents and profits of my estate, so far as the same may, from time to time, be sufficient therefor, and all my just debts, also all sums advanced to my children and grand children, as hereinafter authorized, before the final division of my estate, and all the expenses incident to the execution of the trusts, hereinafter declared, are to be paid [4] in like manner; but if at any time the rents and profits then already accrued, and in the hands of my said trustees, shall be insufficient for these objects, the deficiency she be supplied out of other funds belonging to my
163 estate, or by temporary loans of money; and all sums thus drawn from the capital, or principal of the trust fund, or borrowed, shall be charged against future rents and profits, and be reimbursed therefrom as soon as may conveniently be done.

And in the final partition of my estate, in the manner hereinafter directed, such of the said annuities as shall not then have ceased, shall be effectually secured to the respective legatees.

In order to preserve my estate from being wasted, and to insure

its more judicious management, so that out of the rents and profits thereof, ample means may be afforded for the purposes above mentioned, and for the support and education of my numerous offspring, and with an exclusive view to the true interest of all for whom it is my duty to provide, I have determined to confide the care and management of my estate temporarily to trustees. In pursuance of these designs, and in view also of the lamentable consequences which so frequently result to young persons brought up in affluence from coming at once into the possession of property, I have also determined that this trust shall continue, and that the final division of my estate shall not take place, until the youngest of my children and grand-children, living at the date of this my will, and attaining the age of twenty-one years, shall have attained that age;

and in order moreover, to provide against accidental inequali-
164 ties and diversities of condition, which, at the expiration of the trust, may exist among the cestury que [5] trusts, but more especially with a view to discourage prodgality and vice; and to furnish an incentive to economy and carefulness, I have further determined to invest my trustees with extensive discretionary powers, in regard to the disposition of my property, to be exercised by them, with a just regard to circumstances, and especially to the respective merits of the several cestury que trusts, hereinafter mentioned.

I therefore appoint Gideon Hawley and James King, esquires, and my son, Augustus James, of the city of Albany, my said trustees; and I give, devise, and bequeath to them, the said Gideon Hawley, James King, and Augustus James, all my estate both real and personal, of which I shall be possessed and entitled to devise and bequeath at the time of my death, and not hereinbefore devised and bequeathed to my wife, in trust, to manage and dispose of the same, and to receive and apply the rents, issues, and profits, proceeds, interest, and income thereof, in the manner hereinafter directed and expressed.

As soon as it may be deemed proper, and within one month after my decease, my said trustees shall proceed to make a full and particular inventory of the trust estate, arranging the different
165 discriptions of property under different appropriate heads, and shall immedately file a true copy thereof, attested by their oaths to be a just and true inventory of all my estate, both real and personal, as far the same shall have come to their knowledge, and they have been able, upon diligent examination to ascertain in the office of the surrogate of the county of Albany; and in case any other property belong-[6] ing to the trust fund, shall afterward come to their knowledge, they shall, in like manner, make and file an inventory thereof.

And with a view to the more prompt, systematic, and easy performance of the various duties connected with the trust it will be proper that they allot and distribute among themselves the details of the business arising therefrom.

It, is, however, my wish, and I accordingly direct, that my son

Augustus shall succeed me as a partner with Moses De Witt Burnet, of the village of Syracuse, in his lease of the salt works and flouring mills in that village, and that he shall attend particularly to the busi- of the firm, as an active partner in the city of Albany, in the manner now done by him and me; so long as he does this he shall be entitled to receive to his own use the whole share of the profits of the partnership to which I am now entitled, he paying the proportion of the rent that may accrue upon the lease, which, by the agreement
166 between the said Burnett, Isaia Townsend, John Townsend, and myself, I am obligated to pay.

It is my wish also that my son Augustus shall be charged with, and take upon himself, the collection of all rents accruing to the trust estate as well elsewhere, as in the city of Albany, and that he shall continue to perform this duty, so long as in the opinion of my other trustees he shall execute the same properly, and for the performance of this service I authorize him to annually to retain to his own use such reasonable percentage upon the amount [7] collected, by way of commission, as the other trustees shall deem it proper to allow.

It is also my will, and I accordingly order and direct, that in addition to the particular and exact accounts which must necessarily be kept by each of my trustees, in regard to all matters, of which they shall severally have the especial charge, a full and accurate general account shall always be kept by of my said trustees, of the whole business of the trust, whose duty it shall also be, at the expiration of each year, to furnish each of the other trustees with an accurate transcript of such account, or of so much thereof as shall exhibit, in a satisfactory manner, the transactions relative to the trust during such year;
167 and it is my wish that this duty shall be undertaken by my trustee, Gideon Hawley, and performed by him so long as he shall continue to reside in Albany, and to act as one of my trustees. To this end, I order and direct that full and exact reports shall be made to him while he shall continue so to reside and act, and afterwards, to such other discreet person as may be appointed to succeed him in the performance of this duty by each of my other trustees respectively, at least as often as once in each year, of all these proceeding receipts and expenditures, in the exercise of their respective functions during such year. And I further order and direct that he shall have the immediate custody of all deeds, mortgages, bonds, notes and other evidences of title, and of debt; and that all moneys belonging to my estate shall be paid to him either directly, or by my other trustees respectively, from time to time, without unnecessary delay, as often as such [8] moneys shall have been received by them.

It is also my will that so long as my trustee, James King, shall continue to reside in Albany, and to act as one of my trustees he shall be charged with, and take upon himself, the collection and securing of debts and demands belonging to my estate, for the collection or securing of which professional services may be required.

168 It is however my express will and intention that no one of my trustees shall severally have the power to perform any acts or duties whatsoever in relation to my estate, or concerning the execution

of the trust hereby created, excepting what pertains to the final distribution of my estate, as hereinafter expressly provided, and excepting such subordinate acts as a trustee may lawfully perform by an agent, and which a majority of the other trustees shall have duly authorized him to perform as such agent; and I do further declare and direct, that no sale or transfer shall be made of any part of my estate, real or personal, and no investment be made of any of the funds of my my estate in the purchase of any property, real or personal, without the consent of a majority of the trustees; and I do hereby authorize and empower the majority of the trustees consenting to such sale, transfer, or investment, to make and execute the necessary conveyances, instruments and contracts, to carry the same into effect without the concurrence of the other trutees, or by an [9] instrument under their hands and seals, to appoint and authorize one or more of their own numbers to execute the same.

I further order and direct that my trustees shall proceed as expeditiously as is consistent with a just lenity to my debtors, to
169 collect all debts due me at the time of my decease, or to see that such debts are made secure.

They shall also sell all my real property in all places other than the cities of New York and Albany, and the village of Syracuse, as fast as fair prices can be obtained therefor; and I hereby authorize them also, at their discretion, from time to time to sell or exchange portions of my real estate in the said cities and village. I also empower them to invest so much of the proceeds of all sales and of all other moneys which shall come to their hands as may not be wanted to enable them to fulfil the other purposes of the trust, and to pay legacies and debts in the purchase of real estate, or in the erection of houses in either of said cities or in the village of Syracuse, or in loans, annuities, or in any other safe and proper manner; but they are, nevertheless, to bear in mind and keep steadily in view, that my will and intention is that investments shall, from time to time, be so made as that at the time appointed for the ultimate division of my estate the same shall consist chiefly or altogether in real estate.

For the doing and executing of all which, and for the doing and executing of all other acts and things necessary to the prudent management of my estate and consistent with the declared
170 objects of their trust, I hereby invest them with full power and authority.

[10.] For the better education of my children, who may be minors at the time of my decease, I give and dispose of the tuition and custody of them, and each of them, to my said wife, for such time as they, or any of them, respively continue unmarried and under the age of twenty-one years; but if my said wife shall die during the non-age of my said children, then I give the tuition and custody of those so being under the age of twenty-one years, at the death of my wife, to my trustees, for the time being, who are to make suitable provision out of the rents and profits of my estate for their education and support, according to their several ages and exigencies.

In the event of the death, during the continuance of the trust, of

any one of my sons now living, leaving a widow and a child or children, or a child or children only, and in the event of the death of any one of my daughters leaving a child or children, my trustees are authorized and required, if necessary, to make suitable provision out of my estate for the support of every such widow, and for the education and support of every such child, according to circumstances and to their respective exigencies; provided, however, that such provision shall not exceed, in any case, the allowance of
171 fifteen hundred dollars a year to the widow and children of any such deceased son, or to the children of any such deceased daughters.

If, during the continuance of the trust, either of my sons, or of my grandsons, whose parent, being my son [11] or daughter, is deceased, having attained the age of manhood, shall desire to establish himself in any respectable profession or trade, and shall have need on that account of money for the purchase of professional books, implements, or the like, or if he shall desire to purchase real property in the city or town where he may reside, or intend to reside, for his own accomodation and use, or, to a moderate amount, with a view to speculation, in every such case I authorize my trustees, with the approbation of my wife, if she shall be living, at their discretion, to advance to such son or grandson such sum or sums for either of these purposes, as they may think fit, but such advance to any one individual shall not in the whole exceed the fourth part of the probable amount to which such individual will be entitled upon the ultimate division of my estate.

If, during the continuance of the trust, either of my sons, or of my grandsons, whose parent, being my son or daughter, is deceased, having attained the age of manhood, shall desire to engage in
172 any honorable occupation requiring the employment of capital, and if, in the opinion of my trustees, for the time being, and of my wife, if she shall be living, it shall be expedient that he should do so, I authorize my said trustees, at their discretion, to advance to such son or grandson, a sum or sums, not exceeding in the whole the fourth part of the probable amount to which such son or grandson will be entitled upon the ultimate division of my estate.

And if, during the continuance of the trust, either of my daughters, or my grand-daughter, Mary Ann King, [12] shall choose to marry, and provided she shall have at all times previously behaved dutifully and affectionately towards my wife and her other relatives, and if, on account of her marriage it shall, in the opinion of my trustees, and of my wife, should she be living, be, in all respects, fit and proper that such daughter or grand-daughter should then receive a portion of my estate, I authorize and require my trustees to pay to her a sum not exceeding three thousand dollars; and I further authorize them, if it shall satisfactorily appear to them to be necessary, to advance to her, from time to time, such further sums not exceeding two thousand dollars in any one year, for her support and the promotion of her welfare, according as the exigencies of her case may, in their opinion, require; and in like manner upon the mar-

173 riage of either of my grand-daughters, Anna McBridge James, daughter of my son William or Lydia James, daughter of my deceased son, Robert, I authorize and require my said trustees, under the like circumstances, and upon the like conditions, to pay to her a sum not exceeding two thousand dollars.

In order to entitle my several sons, John, Edward, and Howard, and my grandson Robert, son of my deceased son, Robert, to the full benefit of the premises hereinafter made for them, they must severally learn some one of the professions, trades, or occupations usually pursued in this country as a livelihood, and must assiduously pursue and practice the same.

For the purpose of inculcating habit of industry and economy, I order and direct, that all sums of money ad- [13] vanced by my trustees during the continuance of the trust to, or on account of, any one of my sons and daughters, grandsons and grand-daughters, shall be charged against them, respectively, as debts due to my estate, and that, upon the final division of the residue of my [of my] estate, as hereinafter directed, the sums so advanced to each, together with compound interest thereon, at the rate of five per cent. per annum, shall be deducted from the respective shares of those to whom such
174 advances shall have been made.

I give, devise, and bequeath to the children of my son Augustus, and his present wife, Elizabeth, to my grand-daughter Anna McBride James, daughter of my son William, and to my grand-daughter Lydia James, daughter of my deceased son Robert, in manner following, that is to say, at some period during the continuance of the trust, and as near the termination thereof as may be found convenient; my trustees shall, out of the rents and profits which shall have accrued out of my estate, purchase productive real property to the amount, as nearly as may be, of fifty thousand dollars, and shall, at the expiration of the period herein limited for the continuance of the trust, convey the same to such of the said children of my said son and his present wife, then living, and in such proportions as my said son Augustus, and his said present wife, or the survivor of them, if only one shall be living, shall direct, and if neither of them shall be living, then to such of their said children, and in such proportions as my said [14] trustees, together with my wife, should she be living and choose to act, may think proper; and to each of my grand-daughters, Anna McBride and Lydia, above-named, my trustees shall set off and convey so much other productive
175 real property, belonging to my estate, as shall, in their opinion, be worth twenty thousand dollars.

I further order and direct, that at the expiration of the period herein prescribed for the continuance of the trust, my trustee, Gideon Hawley, or such other person as may be appointed in his place, in the manner hereinafter directed, together with such other trustees or trustee, if any, as may be appointed in the place of my son Augustus and James King, or either of them, and who shall not be intrusted in the division of my estate, shall, together with my wife, should she be living and choose to act, immediately proceed to

divide the residue of my estate remaining in their hands not hereinbefore devised or bequeathed, as nearly as may be, into twelve equal parts, and shall allott and distribute, and my trustees shall thereupon convey, the same to the persons, and in the proportions following: that is to say, to my sons Augustus, John, Edward, and Howard; to my daughters Janette, Catharine, and Ellen; and to my granddaughter Mary Ann King, each one part, and to my grandson Robert, son of my deceased son Robert, one-half of one part, subject, however, to the conditions, limitations, and retributive purposes hereinafter expressed.

176 Out of the share to be allotted to my grand-daugh- [15] ter Mary Ann King, or to her heirs, as hereinafter provided, my trustees shall pay to her father, James King, for his own use, the sum of ten thousand dollars, or at their election, shall convey to him, in fee, so much of the real estate comprised in such share, as shall by them be estimated to be worth that sum.

In the event of the death of either of my said sons or daughters, or of my said [or of my said] grand-son Robert, of my said grand-daughters, Mary Ann King, Anna McBride, and Lydia, or if the said James King, before or after my own decease, within the period above limited for the continuance of the trust, I order and direct that the share or portion of my estate to which such deceased person would, if living, have [have] been entitled, so far as relates to the personal estate, if any, comprised in such share, shall be allotted and conveyed in such manner as if such deceased person had died intestate, lawfully possessed thereof, the same would have been bestowed, by force of the statutes of this State regulating the distribution of the personal estates of deceased persons who have died intestate; and so far as relates to the real estate comprised in such share, the same shall be allotted and conveyed in such manner as if such deceased person, having derived such estate from me, or if a grandchild, from his deceased parent, had died intestate,

177 lawfully seized thereof, in fee, the same would have descended, by force of the statutes of this State, regulating the descent of the real estate of persons who die intestate, subject, however, to the conditions, limitations, and retributive purposes hereinafter expressed.

If either of my said sons, John, Edward, and Howard, or my grandson, Robert, shall fail to observe, and faith- [16] fully to the directions hereinbefore given concerning them, or if, at the expiration of the period limited for the continuance of the trust, it shall satisfactorily appear to my trustee or trustees authorized to make the final partition of my estate, that any one of those who would otherwise have been entitled to share in such partition, leads a grossly immoral, idle, or dishonorable life, such delinquent shall not be entitled to the share of my estate hereinbefore provided for such person, but shall be considered as having forfeited the same, either wholly or in part; and I do hereby order and direct my trustee or trustees authorized to make partition of my estate, to withhold from such delinquent such share, either wholly or in part, according to the degree of demerit by which such forfeiture shall be incurred, of which, and of

the existence of the facts rendering such forfeiture proper,
178 my said trustees or trustees shall be exclusively authorized to judge, and the portions of my estate so withheld shall be added to the residuary parts.

As it regards the remaining three and a half parts of my estate, together with such additions, if any, as shall be made thereto in the manner above mentioned, I authorize and require my said trustee or trustees authorized to make partition of my estate, together with my wife, if she shall be living, to apportion the same, according to their discretion, among all or any number of those herein designated as in any event entitled to share in the ultimate disposition of my estate, but with a just regard to circumstances, and [17] a scrupulous attention especially to the personal merits and demerits of each individual, and my trustees shall execute conveyances in pursuance of such apportionment.

And although the extensive and extraordinary power herein conferred, of punishing idleness and vice, and of rewarding virtue, must, from its nature, be in a considerable decree discretionary, and although its faithful exercise may prove to be a task at once responsible and painful, yet it is my full intention and earnest wish that it shall be carried into execution with rigid impartiality, sternness, and inflexibility.

179 In order to provide for the decent maintenance of those (if unhappily there should be any such) whose portions shall be wholly withheld, I order and direct that to every such individual an annuity for life shall be given of such amount only as shall be sufficient to supply the probable actual wants of such individual.

Having hereinbefore provided for the division and apportionment of my estate among the several cesquy que trusts, but without particularly designating the quantity of interest to be conveyed to them, I now declare it to be my will, and I accordingly order and direct, that every conveyance of any portion of my real estate, to be executed by my trustees, upon the expiration of the trust herein created, in pursuance of the foregoing directions, shall be to the grantee for life, with power to devise the same in fee to his or her lineal descendant or descendants, in such manner or proportions as he or she may think proper; and in the event of such grantee either leaving no such descendant, or omitting to make a valid disposition of the [18] same, in execution of such power, then with remainder in fee to such person or persons as, by the statutes of this State regulating the descent of real property, would have been entitled to inherit the estate had the grantee, having derived the same
180 from me, died intestate, lawfully seized thereof in fee, excepting, however, the conveyance, if any, to James King, or his heirs, which shall be in fee, and the conveyances to such of my descendants, if any, entitled to share in the division of my estate, as by reason of their having been born subsequently to my decease, may be incapable of taking less than an estate of inheritance, which conveyances shall also be in fee.

It being my intention that there shall always be three acting,

trustees of my estate during the continuance of the trust, all of whom shall reside in the city of Albany, I do hereby direct, that in case any one or more of the trustees shall refuse to act, or become incapable of acting as such, or shall resign, remove from the city of Albany, or die, it shall be the duty of the remaining trustees to apply, by petition, to the chancellor for the apointment of a suitable person or persons to supply the vacancy or vacancies so created, and to name in such petition the person or persons whom they desire to be appointed.

And every person so appointed shall succeed to, and be fully invested with, all the rights and powers, and be subject to all the duties and responsibilities pertaining to, the office or place which he is appointed to fill in like manner as he would have been had he been herein expressly named and appointed [19] such trustee.

181 And my will is, and I accordingly hereby declare, that my said trustees shall not be charged, or chargeable with, or accountable for, any loss which may happen to my estate, unless such loss shall happen through their wilful default or neglect, and that they shall not respectively be held accountable for the separate acts of each other, but they shall, in all things, discharge the duties of the trust with care and fidelity, according to the best of their skill and understanding.

Foreseeing that the duties imposed upon my trustees may require a considerable portion of their attention, I deem it proper to declare my views and intentions relative to the subject of their compensation. I consider the liberal and extraordinary provisions which I have made in favor of my own Augustus and his family as justly entitling me to expect that he will cheerfully take upon himself the burthen of the trust without other compensation, and, in like manner, I expect that the liberal provisions herein contained in favor of Mr. King and his daughter, together with the emoluments likely to arise to him from being employed professionally in the management of my estate as hereinbefore provided, will be derived by him an adequate compensation for his services. To my trustee, Gideon Hawley, esquire, in full compensation for the performance of all the duties required of him, I allow the sum of five hundred dollars a year so long as

182 he shall continue to perform such duties.

And should it at any time become necessary, as hereinbefore provided, to [20] procure the appointment of another person in the place of either of my said trustees, he shall be entitled to such compensation for his services as my trustee, upon whose petition he shall be appointed, shall think proper to allow.

And lastly, I hereby constitute and appoint my trustees above-named, and their successors appointed in the manner hereinafter directed, executors of this my last will and testament.

In witness whereof, I have hereunto set my hand this twenty-fourth day of July, one thousand eight hundred and thirty-two, the words "except what pertains to the final distribution of my estate as hereinafter expressly provided and" having first been interlined on the

eighth page; the words "the death of" and the words "of my" on the tenth page; the words "or grand-daughter" on the twelfth page; and the words "Mary Ann King" on the fifteenth page; and also the words included in a parenthesis on the sixth page, having first been obliterated.

WM. JAMES.

The above instrument, consisting of twenty pages, was at the date thereof, declared to us by the testator, William James, to be
183 his last will and testament, and he then acknowledged to us that he had subscribed the same, and requested us to attest it by signing our names hereto as witnesses.

ALFRED CONKLING,
Residing in the city of Albany.
MARGARET C. CONKLING,
Residing in the cit of Albany.

Surrogate Court.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the twenty-second day of January, in the year of our Lord one thousand eight hundred and thirty-three, before Anthony Blanchard, surrogate of the county of Albany, came James King, and Augustus James, who are severally intrusted, and who are also two of the executors named in the last will of William James, late of the city of Albany, deceased, and which is hereunto annexed, and produced unto the surrogate aforesaid, in the Surrogate Court of the county of Albany, due and satisfactory proof of the service of notice of the intention of the said James King and Augustus James, to apply to have the aforesaid will proved before the surrogate aforesaid, pursuant to the provisions of article first, and title first, of chapter sixth, of the second part of the revised statutes of the State of New York. upon all the heirs at law of the said William James, deceased, and also upon John V. L. Pruyn, heretofore duly appointed by the said surrogate, the guardian in this proceeding
184 of the interests of the minor heirs of the said deceased; and thereupon, the proofs of such service was filed in the office of said suraogate, and the said John V. L. Pruyn, guardian of the interests of the minor heirs of the said William James, deceased; in the premises also appeared before the surrogate aforesaid, on the day aforesaid; and the said James King and Augustus James, exhibited in open court, before the surrogate aforesaid, the last will of the said William James, which is hereto annexed, and which bears date on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and thirty-two, and to support the said will of the said William James, deceased, Margaret C. Conkling, of the city and county of Albany, one of the attesting witnesses hereto, was produced and examined in open court, before the said surrogate; and the said Margaret C. Conkling, being first duly sworn, did depose and testify in manner following, that is to say:

COUNTY OF ALBANY, *ss*:

Margaret C. Conkling, of the city of Albany, in the county of Albany, aforesaid, being duly sworn in open court, doth solemnly depose and say, that she is a subscribing witness to the instrument which is now shown and exhibited to her, and which purports to be the last will and testament of William James, late of the city of Albany, in the county of Albany, aforesaid, deceased, and which bears date on the twenty-fourth of July, in the year of our Lord one thous-
185 and eight hundred and thirty-two. And this deponent further saith, that she subscribed the said instrument as such witness, at the house of her father, Alfred Conkling, in the said city of Albany. And this deponent further saith that, she did not see the said William James subscribe his name to the said instrument, but that when she entered the room in which she signed the said instrument, as such witness, the said William James was in the said room, and the said instrument was lying on a table therein. And this deponent further saith, that she went into the said room at the request of her said father, who informed her that the said William James desired her to be a witness to his will; that immediately after her entrance, the said William James, in reply to questions put to him by her said father, acknowledged the said instrument to be his last will and testament, and requested her said father and herself to sign the same as witnesses thereto. And this deponent further says, that she saw her father then and there subscribe his name as a witness to the said instrument, and that she, this deponent, also then and there immediately subscribed her name thereto as a witness. And this deponent further saith, that she is not now able to recollect that the said William James acknowledged in terms that he had subscribed the said instrument, but that according to her best recollection and belief, previous to the attes-
186 tation of the said instrument either by her father or by herself, as above stated, her said father said to her audibly, and in the presence and hearing of the said William James, the certificate, at the conclusion thereof, stating, among other things, as she now perceives, that the said William James then acknowledged that he had subscribed the said instrument. And this deponent further saith, that she was not at that time aware of the necessity of endeavoring to remember accurately all the particulars of the transactions. And this deponent further saith, that at the said time when the said William James made the acknowledgment and request above mentioned, and when this deponent signed the said instrument as such attesting witness, the said William James appeared to this deponent to be of sound mind and memory, of full age to execute a will, and was not under any restraint to the knowledge, information, or belief of this deponent, and further saith not.

MARGARET C. CONKLING.

Subscribed and sworn this 22d day of January, 1833, before me.

A. BLANCHARD,
Surrogate of Albany County.

And the deposition and examination aforesaid, reduced to writing, pursuant to the statute in such case made, was filed in the office of the surrogate aforesaid; and thereupon the further proof of
187 the aforesaid will was adjourned by the said surrogate and by consent of the parties aforesaid, until the twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-three, at which day last mentioned, before the surrogate aforesaid, in the Surrogate Court in the county of Albany, came the said executors, and the said John V. L. Pruyn; and thereupon Alfred Conkling, of the city and county of Albany, the other attesting witness to the said will, was produced and examined in open court, before the said surrogate, and the said Alfred Conkling, being first duly sworn, did depose and testify in manner following, that is to say:

COUNTY OF ALBANY, *ss.*:

Alfred Conkling, of the city of Albany, in the county of Albany aforesaid, being sworn in open court on his corporal oath, doth solemnly depose and say, that he is a subscribing witness to the will and testament of William James, late of the said city of Albany, now shown and exhibited to him, this deponent, and which bears date on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and thirty-two. And this deponent further says, that the said will was drawn up by him, this deponent, for the said testator at his request, and is in the handwriting of this deponent. And this deponent further says, that after the completion
188 of the said will by this deponent, the said testator called at the house of this deponent in the city of Albany, and having then and there carefully read over the said will, did, in the presence of this deponent, subscribe his name at the end thereof.

And this deponent further saith, that immediately after the signature thereof by the said testator this deponent, at the request of the said testator, called Margaret C. Conkling, a daughter of this deponent, into the room in which the said testator had subscribed the said will, and in which he, the said testator still was, and informed her, the said Margaret, that the said testator wished her, the said Margaret, to be a witness to his will.

And this deponent further says, that he thereupon read to her in an audible voice, and in the presence and hearing of the said testator, the certificate of attestation at the end of the said will, at the same time explaining the same to her by calling her attention to the fact that they, this deponent and the said Margaret, were about to attest the truth of the statements contained therein.

And this deponent further says, that having done so, he immediately turned to the said testator and asked him either whether he acknowledged to have subscribed the said will as his last will and testament, and whether he requested this deponent and the said Margaret to attest the same as witnesse, or whether he acknowledged the
189 same to be his last will and testament, and whether he requested, his deponent and the said Margaret to attest the same as witnesses, but whether this deponent used the one or the

other of these forms of words he cannot now certainly recollect, though, according to his best recollection and belief, he used the former.

And this deponent further says, that to the interrogatory thus addressed by him to the said testator, he, the said testator, replied in the affirmative, and thereupon he, this deponent and the said Margaret C. Conkling, did then and there, in the presence of the said testator, immediately severally sign their names as attesting witnesses to the said will at the end thereof.

And this deponent further saith, that at the same time, when the said testator subscribed his name to the said will as aforesaid, and at the time of this deponent's subscribing his name as an attesting witness thereto, as aforesaid, the said William James was of sound mind and memory, of full age to execute a will, and was not under any restraint to the knowledge, information or belief of this deponent.

And further this deponent saith not.

ALFRED CONKLING.

Subscribed and sworn this 23d day of January, 1833, before me.

A. BLANCHARD,
Surrogate of Albany County.

190 And thereupon all and singular the premises being considered, and due and mature deliberation having been had therein, on this twenty-third day of January, in the year one thousand eight hundred thirty-three, it is declared by the surrogate aforesaid, that it appears and is to him fully proved, pursuant to the first article of the first title of the sixth chapter of the second part of the revised statutes of the State of New York, that the notice of the intention to apply for the proof of the said last will, required by the several provisions of the said first article to be served upon the heirs-at-law of the said William James, deceased, hath been duly served on all the said heirs at law, and that all the provisions of the said first article have been fully complied with in this proceeding, and that the said William James was, at the time of his death, an inhabitant of the county of Albany; and it is further declared by the said surrogate that the said instrument, exhibited as aforesaid, and which is hereunto annexed, and which bears date on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and thirty-two, is the last will of the said William James, deceased, and that the same was executed by the said William James in due form of law, and that the said William James, at the time of executing
191 the same was in all respects competent to devise real estate, and was not under any restraint; and it is determined, adjudged and decreed by the surrogate aforesaid, that the said last will of the said William James, deceased, which is hereunto annexed, be admitted to record, pursuant to the provisions of article first of title first, of chapter sixth of the second part of the revised statutes of the State of New York; and thereupon the said will is recorded by the surrogate aforesaid, in the surrogate office of the county of Albany,

and the record thereof is signed and certified by the said surrogate on this twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-three, pursuant to the provisions of the article, chapter, and part aforesaid of the revised statute of the State of New York.

In witness whereof the said surrogate hath hereunto affixed his seal of office.

Witness, Anthony Blanchard, esquire, surrogate of the county of Albany, at the city of Albany, the twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-three.

[L.S.] A. BLANCHARD.

192 Surrogate Court.

STATE OF NEW YORK, *County of Albany*:

I, Anthony Blanchard, surrogate of the county of Albany, do hereby certify the foregoing to be a true record of the last will of William James, late of the city of Albany, in the county of Albany, deceased, by me admitted to record on the twenty-third day of January, in the year of our Lord one thousand eight hundred and thirty-three, and of the proofs and examinations in relation thereto before me, taken pursuant to the several provisions of the revised statutes of the State of New York, concerning wills of real property, and the proof thereof; and I do further certify, that I have compared and carefully examined the said record with the said original will, and with the original proofs and examinations, taken as aforesaid, and that I find the same to be a correct record of the whole of the said original will and the said original proofs and examinations.

Witness my hand this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and thirty-three, at the surrogate office of the county of Albany.

A. BLANCHARD.

193 STATE OF NEW YORK, *Albany county ss:*

SURROGATE'S OFFICE.

I, Israel Lawton, surrogate of the county of Albany, do hereby certify, that I have compared the foregoing copy of the last will and testament of William James, late of the city of Albany, deceased, the copy of the proofs and examinations taken on the probate thereof, and the copy of the certificate of such probate, with the originals thereof, on record in this office, and that the same are correct transcripts therefrom, and the whole of said originals.

In testimony whereof, I, the said surrogate, have hereunto set my hand, and affixed the surrogate's seal of the county of Albany this 14 day of January, A. D. 1867.

[SEAL.] ISRAEL LAWTON, *Surrogate.*

[5 cent rev. stamp.]

194 Henry Carpenter, the defendant, was next called as a witness, and being duly sworn, testified that he was the defend-

ant in this suit, and that he purchased the land in controversy during the year of the date of his deed above introduced in evidence; that the negotiation and agreement, prior to said purchase, was with John B. Strong; that witness paid for said land the sum of twelve hundred dollars, and at the time he believes he paid a full fair value thereof; the land in controversy adjoined the farm, and home of witness, and he bought the same to extend his farm, and for farming purposes. He resided there then, and does now. Witness is sixty-two years of age now, and at the time of the purchase did not know of any pretended title or claim to the land. He supposed he was getting a good title. He purchased the same in good faith, before I paid the money and took a deed of the land in controversy. I sent my son-in-law Turpenging, to Princeton, the county seat, to search the records, to fully know about the title. The county clerk refered, and told him to get a lawyer and make a search, and give his opinion. My son-in-law got a lawyer, and he
195 wanted two or three days to make such search, and give his opinion. Two or three days thereafter I received a letter from the lawyer, and he said it was a good title, and the best on record; and after I had got his opinion, I purchased the land and paid the money. I would not have purchased, and so told Strong, if I was going to have any trouble about the title, or the same was not good. I never examined any records. I couldn't have told, if I had, about the title.

I have worked upon and improved the farm. I have broke it all up but about 40 acres, now fenced off for pasture; all the rest is to grain, wheat, oats, and corn; the pasture is now to grass. I have built all the fences; it was in no way fenced when I purchased. I have put fences all around it, and cross fences; there is roads clear around it, so I had to do all the fencing around the farm. I think I have put on over two thousand dollars of improvement. I think it is worth, in connection with my farm, a good deal more than four thousand dollars. I have paid all the taxes since I made the purchase, except one year. I don't know who paid it that year. I
196 found it paid. I paid, in April, 1861, the taxes for 1860, and all the taxes since that time, save that one year; who paid that I do not know. Nobody, during all the time, ever made any claim to the land of me, or to my knowledge. The first I ever heard or knew of any claim of title to this land by anybody was when I was served with the process in this cause. I paid the lawyer who gave his opinion as to the title of this land at the time I made the purchase; at least my son-in-law did; and I paid him.

Cross-examined by Mr. Goudy:

I don't know the name of the lawyer who gave the opinion as to the title. He said it was good. He never told me he sent me a letter so expressing his opinion. I would not have bought if he had not so written. I tried to find the letter before I came from home, but I could not, nor could my family. I wanted to bring it along but I could not find it. I don't know that the lawyer's name was Peters

or Farwell. I do not recollect the name. I don't know that it was one of Strongs' lawyer's. I have not employed lawyers or counsel to defend this case. I called on Strong and told him of my
197 being served, and he hired the lawyers, I did'nt. I look to him to defend the title and this case. If I lose I expect my warrantor to refund. When suit was commenced I had one hundred acres broke and fence on three sides.

Defendant then offered the deposition of Wm. H. De Witt, which is as follows, to wit:

Be it remembered, that an application of Henry Carpenter, of Illinois, who is the defendant in a suit now pending in the Circuit Court of the United States, for the seventh circuit and northern district of Illinois, wherein James Dexter is plaintiff, and Henry Carpenter is the defendant, I, a notary public in and for the city and county of Albany, in the State of New York, have this twenty-seventh day of June, A. D, 1865, at Albany, in the city and county and State aforesaid, having given no notice to the said plaintiff, proceeded to examine William H. DeWitt, as witness on behalf of the defendant in the aforesaid suit; and I certify that the reason for taking said deposition is, and the fact is, the said witness
198 resides at Albany, New York, aforesaid, more than one hundred miles from Chicago, Illinois, the place where the court in which said cause is expected to be tried, is appointed by law to be held, and the reason why notice of the time and place of taking said deposition was not given to the said plaintiff or his counsel is, and the fact is, the said plaintiff, and New York City, E. W. Hazzard, his counsel, resides in the State of Illinois, more than one hundred miles from the city of Albany, the place where said deposition was taken; and I do further certify, that the said William H. DeWitt, of Albany, New York, first being by me carefully examined, cautioned and duly sworn to testify the whole truth, says, in answer to the following interrogatories by me to him propounded.

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Name, William H. DeWitt; age 65 years; occupation, merchant; Albany, N. Y.

WM. H. DE WITT.

Inter. 2nd. Did you know Ephraim DeWitt, formerly of
199 Albany, New York? If yea, is he dead or alive? and if dead, about what time did he die?

I did know Ephraim DeWitt; he is dead; died more than 20 years ago.

WM. H. DE WITT.

Inter. 3rd. If dead, did the said Ephraim De Witt leave surviving him, any wife, brothers or sisters, or children? If yea, please state whether wife, brothers or sisters, or children, and please give their names, if you knew them?

His wife survived him, but died many years since; no brothers or

sisters, to the best of my knowledge, survived him; children surviving Ephraim DeWitt, were Jacob V. L. DeWitt, Maria DeWitt, Charles E. DeWitt, Ephraim H. DeWitt, Catherine DeWitt, Elizabeth DeWitt, wife of Albert I. Smith, Julia C. DeWitt, and James R. DeWitt, all now believed to be living, except Maria and Catherine.

WM. H. DE WITT.

Inter. 4th. Please state what relation you are, if any, to said Ephraim DeWitt, and any other information you may know relative to said case.

I was his nephew, and know nothing about this suit.

WM. H. DE WITT.

200 Inter. 5th. Do you know the parties to this suit, or are you in any wise interested in the prosecution or result of the case?

I do not know either of the parties in this suit, and am not in any way interested in its result.

WM. H. DE WITT.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed separately by the said Wm. H. DeWitt, of the city of Albany, in my presence, and that I am not of counsel or attorney, for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal this 27th day of June, A. D. 1865.

[SEAL.] WM. H. HASKILL,
Notary Public.

[5 ct. U. S. rev. stamp.]

Endorsed: "Rec'd by mail, and opened June 29th, 1865, by WM. H. BRADLEY, *Cl'k.*"

Here defendant rested.

200½ And the plaintiff, as rebutting evidence, offered to and read in evidence a certified copy of a record and decree entered in Warren county, Illinois, in which James Dexter, executor, &c., of John B. James, *et al.*, are complainants, and the defendant in this case, Henry Carpenter, *et al.*, are [are] defendants.

Circuit Court,

201 STATE OF ILLINOIS, *Warren County:*

JAMES DEXTER, executor of will of JOHN B. James, *et al.*
vs.
JOHN B. STRONG, JACOB V. L. DE WITT *et al.*
} In Chancery.

To the honorable Judge of the Circuit Court of Warren county, in chancery sitting:

Humbly complaining show unto your honor, your orators, James

Dexter, executor of the last will and testament of John B. James, deceased, of the city of Albany and State of New York, Mary Ann Post and Minturn Post, her husband, of the city and State of New York, Ellen James Van Buren, Edward L. Van Buren, Catherine B. Van Buren, by their next friend Smith T. Van Buren, and Smith T. Van Buren.

That William James, formerly a resident of the city of Albany and State of New York, departed this life on the 19th day of December, A. D. 1832, seized in fee of the following described lots or parcels of real estate, situated and being in the State of Illinois, to wit:

The southwest quarter of section eight (8,) in township number four (4,) north, range, (2) two west of the fourth principal meridian.

202 The southeast quarter of section four (4,) township four (4,) north of range two (2) west. The northwest quarter of section thirteen (13,) township six (6,) north of range four west, and the northeast quarter of section thirty-two (32,) township four (4,) north of range three (3) west, all in the county of McDonough; and also the northwest quarter of section eleven (11,) township eleven (11,) north of range one (1) west. The southeast quarter of section eleven (11,) township eleven (11,) north of range one (1) west. The southeast quarter of section thirty-four (34,) township ten 10, north of range three (3) west, and the northeast quarter of section twenty-six (26,) township nine (9,) north of range three (3) west, all in the county of Warren; and the southeast quarter of section thirty-two (32,) township two (2,) north of range six (6) west, in Adams county; and the northwest quarter of section twenty two (22,) in township six (6,) north of range eight (8) west, in Hancock county; and the southeast quarter of section eight (8,) in township seven (7,) north of range six (6) west; and the southwest quarter of section eighteen 18,) in township six (6,) north of range six (6) west, in Hancock county; and the northeast quarter of section twenty-five (25,) in township fifteen (15,) north of range six (6) east, in Bureau county; and the northeast quarter of section eleven (11,) in township fourteen (14,) north of range four west. The southeast quarter of section one (1,) in township fifteen (15,) north of range four (4) west; and the

203 southwest quarter of section thirty-five (35,) in township fourteen (14,) north of range four (4) west, in Mercer county; and the southeast quarter of section twenty-seven (27,) in township nine (9,) north of range four (4) east, in the county of Knox; and the northwest quarter of section three (3,) in township nine (9,) north of range four (4) west, in the county of Henderson; and the southeast quarter of section two (2,) in township twelve (12.) north of range four (4) west, in Henderson county; and also the northeast quarter of section six (6,) in township five (5) north of range two (2) west; and the southeast quarter of section eight (8,) in township four (4,) north of range two (2) west, in McDonough county; and the southwest quarter of section eight (8,) in township five (5,) north of range six (6) west, in Hancock county; and the northwest quarter of section eleven (11,) in township fourteen (14,) north of range four (4) west, in Mercer county; and the southwest quarter of section

ant in this suit, and that he purchased the land in controversy during the year of the date of his deed above introduced in evidence; that the negotiation and agreement, prior to said purchase, was with John B. Strong; that witness paid for said land the sum of twelve hundred dollars, and at the time he believes he paid a full fair value thereof; the land in controversy adjoined the farm, and home of witness, and he bought the same to extend his farm, and for farming purposes. He resided there then, and does now. Witness is sixty-two years of age now, and at the time of the purchase did not know of any pretended title or claim to the land. He supposed he was getting a good title. He purchased the same in good faith, before I paid the money and took a deed of the land in controversy. I sent my son-in-law Turpenging, to Princeton, the county seat, to search the records, to fully know about the title. The county clerk refered, and told him to get a lawyer and make a search, and give his opinion. My son-in-law got a lawyer, and he
195 wanted two or three days to make such search, and give his opinion. Two or three days thereafter I received a letter from the lawyer, and he said it was a good title, and the best on record; and after I had got his opinion, I purchased the land and paid the money. I would not have purchased, and so told Strong, if I was going to have any trouble about the title, or the same was not good. I never examined any records. I couldn't have told, if I had, about the title.

I have worked upon and improved the farm. I have broke it all up but about 40 acres, now fenced off for pasture; all the rest is to grain, wheat, oats, and corn; the pasture is now to grass. I have built all the fences; it was in no way fenced when I purchased. I have put fences all around it, and cross fences; there is roads clear around it, so I had to do all the fencing around the farm. I think I have put on over two thousand dollars of improvement. I think it is worth, in connection with my farm, a good deal more than four thousand dollars. I have paid all the taxes since I made the purchase, except one year. I don't know who paid it that year. I
196 found it paid. I paid, in April, 1861, the taxes for 1860, and all the taxes since that time, save that one year; who paid that I do not know. Nobody, during all the time, ever made any claim to the land of me, or to my knowledge. The first I ever heard or knew of any claim of title to this land by anybody was when I was served with the process in this cause. I paid the lawyer who gave his opinion as to the title of this land at the time I made the purchase; at least my son-in-law did; and I paid him.

Cross-examined by Mr. Goudy:

I don't know the name of the lawyer who gave the opinion as to the title. He said it was good. He never told me he sent me a letter so expressing his opinion. I would not have bought if he had not so written. I tried to find the letter before I came from home, but I could not, nor could my family. I wanted to bring it along but I could not find it. I don't know that the lawyer's name was Peters

or Farwell. I do not recollect the name. I don't know that it was one of Strongs' lawyer's. I have not employed lawyers or counsel to defend this case. I called on Strong and told him of my
197 being served, and he hired the lawyers, I did'nt. I look to him to defend the title and this case. If I lose I expect my warrantor to refund. When suit was commenced I had one hundred acres broke and fence on three sides.

Defendant then offered the deposition of Wm. H. De Witt, which is as follows, to wit:

Be it remembered, that an application of Henry Carpenter, of Illinois, who is the defendant in a suit now pending in the Circuit Court of the United States, for the seventh circuit and northern district of Illinois, wherein James Dexter is plaintiff, and Henry Carpenter is the defendant, I, a notary public in and for the city and county of Albany, in the State of New York, have this twenty-seventh day of June, A. D, 1865, at Albany, in the city and county and State aforesaid, having given no notice to the said plaintiff, proceeded to examine William H. DeWitt, as witness on behalf of the defendant in the aforesaid suit; and I certify that the reason for taking said deposition is, and the fact is, the said witness
198 resides at Albany, New York, aforesaid, more than one hundred miles from Chicago, Illinois, the place where the court in which said cause is expected to be tried, is appointed by law to be held, and the reason why notice of the time and place of taking said deposition was not given to the said plaintiff or his counsel is, and the fact is, the said plaintiff, and New York City, E. W. Hazzard, his counsel, resides in the State of Illinois, more than one hundred miles from the city of Albany, the place where said deposition was taken; and I do further certify, that the said William H. DeWitt, of Albany, New York, first being by me carefully examined, cautioned and duly sworn to testify the whole truth, says, in answer to the following interrogatories by me to him propounded.

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Name, William H. DeWitt; age 65 years; occupation, merchant; Albany, N. Y.

WM. H. DE WITT.

Inter. 2nd. Did you know Ephraim DeWitt, formerly of
199 Albany, New York? If yea, is he dead or alive? and if dead, about what time did he die?

I did know Ephraim DeWitt; he is dead; died more than 20 years ago.

WM. H. DE WITT.

Inter. 3rd. If dead, did the said Ephraim De Witt leave surviving him, any wife, brothers or sisters, or children? If yea, please state whether wife, brothers or sisters, or children, and please give their names, if you knew them?

His wife survived him, but died many years since; no brothers or

sisters, to the best of my knowledge, survived him; children surviving Ephraim DeWitt, were Jacob V. L. DeWitt, Maria DeWitt, Charles E. DeWitt, Ephraim H. DeWitt, Catherine DeWitt, Elizabeth DeWitt, wife of Albert I. Smith, Julia C. DeWitt, and James R. DeWitt, all now believed to be living, except Maria and Catherine.

WM. H. DE WITT.

Inter. 4th. Please state what relation you are, if any, to said Ephraim DeWitt, and any other information you may know relative to said case.

I was his nephew, and know nothing about this suit.

WM. H. DE WITT.

200 Inter. 5th. Do you know the parties to this suit, or are you in any wise interested in the prosecution or result of the case?

I do not know either of the parties in this suit, and am not in any way interested in its result.

WM. H. DE WITT.

And I do further certify, that the preceding deposition was reduced to writing by me, and signed separately by the said Wm. H. DeWitt, of the city of Albany, in my presence, and that I am not of counsel or attorney, for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and notarial seal this 27th day of June, A. D. 1865.

[SEAL.] WM. H. HASKILL,
Notary Public.

[5 ct. U. S. rev. stamp.]

Endorsed: "Rec'd by mail, and opened June 29th, 1865, by WM. H. BRADLEY, *Cl'k.*"

Here defendant rested.

200½ And the plaintiff, as rebutting evidence, offered to and read in evidence a certified copy of a record and decree entered in Warren county, Illinois, in which James Dexter, executor, &c., of John B. James, *et al.*, are complainants, and the defendant in this case, Henry Carpenter, *et al.*, are [are] defendants.

Circuit Court,

201 STATE OF ILLINOIS, *Warren County:*

JAMES DEXTER, executor of will of JOHN B. James, *et al.*
vs.
JOHN B. STRONG, JACOB V. L. DE WITT *et al.*
} In Chancery.

To the honorable Judge of the Circuit Court of Warren county, in chancery sitting:

Humbly complaining show unto your honor, your orators, James

Dexter, executor of the last will and testament of John B. James, deceased, of the city of Albany and State of New York, Mary Ann Post and Minturn Post, her husband, of the city and State of New York, Ellen James Van Buren, Edward L. Van Buren, Catherine B. Van Buren, by their next friend Smith T. Van Buren, and Smith T. Van Buren.

That William James, formerly a resident of the city of Albany and State of New York, departed this life on the 19th day of December, A. D. 1832, seized in fee of the following described lots or parcels of real estate, situated and being in the State of Illinois, to wit:

The southwest quarter of section eight (8,) in township nnmber four (4,) north, range, (2) two west of the fourth principal meridian. The southeast quarter of section four (4,) township four (4,)
202 north of range two (2) west. The northwest quarter of section thirteen (13,) township six (6,) north of range four west, and the northeast quarter of section thirty-two (32,) township four (4,) north of range three (3) west, all in the county of McDonough; and also the northwest quarter of section eleven (11,) township eleven (11,) north of range one (1) west. The southeast quarter of section eleven (11,) township eleven (11,) north of range one (1) west. The southeast quarter of section thirty-four (34,) township ten 10, north of range three (3) west, and the northeast quarter of section twenty-six (26,) township nine (9,) north of range three (3) west, all in the county of Warren; and the southeast quarter of section thirty-two (32,) township two (2,) north of range six (6) west, in Adams county; and the northwest quarter of section twenty two (22,) in township six (6,) north of range eight (8) west, in Hancock county; and the southeast quarter of section eight (8,) in township seven (7,) north of range six (6) west; and the southwest quarter of section eighteen 18,) in township six (6,) north of range six (6) west, in Hancock county; and the northeast quarter of section twenty-five (25,) in township fifteen (15,) north of range six (6) east, in Bureau county; and the northeast quarter of section eleven (11,) in township fourteen (14,) north of range four west. The southeast quarter of section one (1,) in township fifteen (15,) north of range four (4) west; and the southwest quarter of section thirty-five (35,) in township
203 fourteen (14,) north of range four (4) west, in Mercer county; and the southeast quarter of section twenty-seven (27,) in township nine (9,) north of range four (4) east, in the county of Knox; and the northwest quarter of section three (3,) in township nine (9,) north of range four (4) west, in the county of Henderson; and the southeast quarter of section two (2,) in township twelve (12.) north of range four (4) west, in Henderson county; and also the northeast quarter of section six (6,) in township five (5) north of range two (2) west; and the southeast quarter of section eight (8,) in township four (4,) north of range two (2) west, in McDonough county; and the southwest quarter of section eight (8,) in township five (5,) north of range six (6) west, in Hancock county; and the northwest quarter of section eleven (11,) in township fourteen (14,) north of range four (4) west, in Mercer county; and the southwest quarter of section

thirty (30,) in township ten (10,) north of range four (4) east, in the county of Knox; and the southwest quarter of section two (2,) township twelve (12,) north of range four (4) west, in Henderson county; and also the northwest quarter of section twenty-two (22,) in township seven (7,) north of range three (3) west; and the northwest quarter of section eight (8,) in township seven (7,) north of range four (4) west, in McDonough county; and the northeast quarter of section nine (9,) in township twelve (12,) north of range one (1) west; and the northwest quarter of section twelve (12.) in township eleven (11,) north of range three (3) west, in Warren county.

204 And your orators further show unto your honor, that the title of said William James to the above-described lands was derived from the government of the United States through mesne conveyances to himself. Your orators further show, that the said William James died intestate, but that such proceedings were afterwards had in the Court of Chancery of the State of New York, that a decree was rendered by said court on the 30th day of December, A. D. 1836, setting aside and annulling the last will and testament of said William James, by virtue of which decree, the entire estate, real and personal, of said William James descended to his heirs-at-law.

Your orators further show, that said William James left surviving him, his widow, Catharine James, and the following named children and grand children, his heirs and only heirs-at-law, to wit:

William James, Augustus James, Henry James, Jeannette James, John B. James, Edward James, Catharine M. James, Ellen King James, and Howard James, his children; and his grand children, Robert W. James and Lydia L. James, the only surviving children of a deceased son, Robert James; and Mary Ann King, the only child of a deceased daughter, Ellen King, to which children and grand children the estate of said William James descended at law.

205 Your orators further show unto your honor, that afterwards the said John B. James, one of the children, as aforesaid, of said William James and Mary Ellen James, his wife, filed their bill of complaint in the Circuit Court of Pike county, Illinois, upon the chancery side thereof, for the purpose of obtaining a partition of the lands and real estate of said William James, deceased, situated in the State of Illinois, among the heirs of said William James, deceased, and that such proceedings were thereafter had in said court in such cause, that at the September term, A. D. 1843, thereof a decree was rendered therein by said court partitioning such real estate and lands as said William James died seized of, lying in the State of Illinois, among said heirs of said William James.

Your orators further show, that in and by said decree to record, of which your orators beg leave to refer for greater certainty, the nineteen (19) quarter sections and tracts of land first hereinabove described, together with other tracts and parcels of land were assigned, allotted and set apart to the said John B. James, and that the six (6) quarter sections next hereinbefore described, together with other tracts of land, were assigned and allotted by said decree

to your orator, Mary Ann Post, there designated, and in said decree mentioned, as Mary Ann King, who has since that time intermarried with your orator, Minturn Post. And that the four (4) quarter sections or tracts of land next and last hereinbefore described,
206 were by said decree assigned and allotted to Ellen K. Van Buren, one of the children of said William James, deceased, whose name at the time of the decease of said William James, was Ellen King James, and who, thereafterwards, and before the commencement of said partition suit, intermarried with your orator, Smith T. Van Buren.

Your orators further show unto your honor, that said John B. James, after the rendering of said decree in partition, and in the year A. D. 1856, departed this life, leaving a last will and testament, in and by which he devised his entire estate, real and personal, to your orator, James Dexter, as executor and trustee, to be devoted to various uses, which said will was duly proved according to law in the Surrogate's Court of the county of Albany, in the State of New York, and letters testamentary granted by said court to your orator, James Dexter, as will more fully appear by the records of Surrogate's Court, reference thereunto being had, which said will and the probate thereof were duly recorded in the records of the County Court of the county of Adams, and of the county of Knox, in the State of Illinois, whereby your orator, James Dexter, became invested with the title in fee simple to the above-described lands or tracts of land assigned and allotted by said decree to John B. James,

207 And your orators further show, that the said Ellen King James, after having intermarried, as aforesaid, with your orator, Smith T. Van Buren, departed this life intestate, on the 31st day of October, A. D. 1849, leaving, surviving her, the following, and only the following, children: Your orators, Edward T. Van Buren, Catherine B. Van Buren, and Ellen James Van Buren, her heirs-at-law, all still minors, in whom became vested, by her death, the title in fee-simple to the four tracts of land last above described, set off to Ellen K. Van Buren, as aforesaid in partiiton.

And your orators further shew unto your honor, that in the fall of the year, A. D. 1862, a deed was placed upon record of Warren connty, State of Illinois, and of other counties, in which some of the above-described lands or tracts of lands are situated by one John B. Strong, purporting to have been executed by said William James, in his life time, and bearing date the thirteenth day of October, A. D, 1819, and purporting to have been acknowledged before Estes Howe, judge of the Albany county Com. Pleas Court of the State of New York, and purporting to convey to one Levi Beebe, of Greenbush, Rensalear county, State of New York, all of the herein above described tracts of land, together with various other tracts of land, for the consideration of fifteen hundred dollars, and purporting to contain full covenants of warranty by the said William James, all of which
208 will more fully appear by the record of the said deed in the county records of Knox county, Illinois; a copy of which record is hereto annexed, marked "Exhibit A."

And your orators further shew, that there appears recorded in the land records of Bureau county, Illinois, where certain of the above-described tracts of land are situated, what purports to be a deed of quit-claim to the above-described tracts of land, purporting to have been executed by said Levi Beebe, for the consideration of one dollar, dated the first day of November, A. D. 1822, and recorded in said Bureau county, on the 17th day of January, A. D. 1862, which deed purports to release and quit-claim the above-described tracts of land, together with other tracts of land to one Ephraim De Witt, of Albany, in the State of New York, all of which will more fully appear by the record of said deed in the land records of said Bureau county, to which your orators pray leave to refer.

And your orators further shew, that the said Ephraim De Witt departed this life about the year A. D. , leaving, surviving him, his heirs-at-law, as your orators are informed and believe, the following persons, to wit: Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles E. De Witt, Elisabeth De Witt Smith, intermarried, and Catherine De Witt Johnson, whom your orators pray may be made parties defendant to this bill of complaint.

209 And your orators allege, that the above-mentioned pretended deed, purporting to have been executed by said William James, and said pretended deed, purporting to have been executed by Levi Beebe, are forged and fraudulent deeds, and that the same were never executed by the said William James and said Levi Beebe, but that they were manufactured and forged by some person to your orators unknown, long after the deaths of the said William James, Levi Beebe and Ephraim De Witt, for the fraudulent purpose of defrauding and injuring your orators, and depriving them of the aforementioned tracts of land.

And your orators aver, that the said pretended and forged deeds constitute a cloud upon the title of your orators to said described tracts of land, and operates to do great injustice to your orators, and to prevent the sale thereof by your orators, and to prevent the recovery of the possession of some of said tracts of land, unjustly and wrongfully withheld from your orators, whereby they are greatly injured and deprived of their just rights in the premises.

And your orator further show unto your honor, that divers other parties, whom your orators pray may be made parties defandant hereto, severally claim title to, or some interest, in certain of said above described tracts of land, so belonging to your orators, by virtue

210 of deeds of conveyance, leases and contracts from the said above-mentioned heirs of said Ephraim De Witt, or in some way to your orators unknown, claim title thereto, or an interest therein, under said heirs of said Ephraim De Witt, as follows, to wit: William H. Hutchinson, William B. Davis, of Edwardsville, Illinois, and John D. Walker, of said McDonough county, claim some interest, as aforesaid, in the N. E. $\frac{1}{4}$, sec. 6, town 5, N. R., 2 W.. in McDonough county.

Matthias Gooderson, of the City and State of New York, claims

an interest as aforesaid, in and to the northeast quarter sec. 32, town 4, N. R. 3 W., in said McDonough County. William H. Hutchman, of Edwardsville, Madison County, Illinois, claims an interest as aforesaid, in and to the N. W. ¼ sec. 8, town 7, N. R. 4 west, in said McDonough County.

Henry C. Strong claims an interest as aforesaid, in and to the N. E. ¼ sec. 9, town 12, N. R. 1 W., in Warren County, Illinois. Michael Secrist, of Warren County, claims an interest as aforesaid, in the S. E. ¼ sec. 34, town 10, N. R. 3 W., in said Warren County. Jacob Hayden and Nathan J. King, of said Warren County, claim an interest as aforesaid, in the N. E. ¼ sec. 26, town 9, N. E. 3 W., in said Warren County.

George P. Sloan and Frederick Gayer, of said Warren County, claim an interest as aforesaid, in the N. W. ¼ sec. 12, town 11, N. R. 3 W., in said Warren County. John Strong, of Hancock County, Ohio, claims an interest as aforesaid, in the N. W. ¼ sec. 22, town 6, N. R. 8 W., in Hancock County. Henry Carpenter, of Bureau County, Illinois, claims an interest as aforesaid, in the N. E. ¼ sec. 25, town 15, N. R. 6 E., in said Bureau County. Hiram Cole,
211 of Knox County, Illinois, claims an interest in the S. W. ¼ sec. 30, town 10, N. R 4 E. in said Knox County; and diverse other persons, at present unknown to your orators, whom your orators pray may be made parties defendant hereto, when discovered.

And your orators further shew, that said John B. Strong, whom your orators pray may be made a party defendant hereto, is the agent and attorney in fact of the said heirs of said Ephraim DeWitt, for the purpose of obtaining possession of said tracts of land, selling and disposing of them, &c.; and is in some manner, unknown to your orators, interested in the proceeds derived from the disposal of said fraudulant claim of title to said lands by said heirs of Ephraim DeWitt.

And your orators further shew, that your orator, James Dexter, is still invested with the title in fee to all of said first mentioned nineteen tracts of land, excepting the following, which the said John B. James conveyed to divers other persons, in his lifetime, by deeds of warranty, to wit: The S. W. ¼ sec. 8, town 4, N. R. 2 W.; the S. E. ¼ 4, T. 4, N. R. 2 W., and the N. W. ¼ sec. 13, T. 6, N. R. 4 W., in the county of McDonough. The N. E. ¼ sec. 11, T. 11, N. R. 1 W., in Warren County; and the S. E. ¼ sec. 32, T. 2, N. R. 6 W., in Adams County; and the N. W. ¼ sec. 22, T. 6, N. R. 8 W., and the S. E. ¼ sec. 8, T. 7, N. R. 6 W., in Hancock County;
212 and the southwest quarter sec. 35, T. 14, N. R. 4 W., in Mercer County; the S. E. ¼ sec. 27, T. 9, N. R. 4 E., in Knox County; the N. W. ¼ sec. 3, T. 9, N. R. 4 W., and the S. E. ¼ sec. 2, T. 12, N. R. 4 W., in Henderson County; and excepting the S. E. ¼ sec. 34, T. 10, N. R. 3 W., in Warren County, to which your orator, James Dexter, has conveyed away the fee since the death of said John B. James.

And that your orator, Mary Ann Post, is still invested with the title, in fee-simple, to the said described six (6) tracts so assigned to her by said decree in partition, as above mentioned.

And that your orators, Ellen James Van Buren, Edward L. Van Buren, and Catherine B. Van Buren, are still seized in fee of the said described four (4) tracts of land assigned by said decree to said Ellen K. Van Buren.

And your orators well hoped that the said defandants would have removed the said cloud upon the title of your orators in the premises.

But now so it is, that the said John B. Strong, and the said heirs of the said Ephraim DeWitt, and the other said defendants combining and confederating together, and with divers other persons, as yet unkown to your orators, (but whom, when discovered, your orators pray may be made parties defendant hereto,) to injure and defraud your orators, refuse to do so, and at times, pretend
213 and allege that the said pretended deed, purporting to have been executed by said William James, and said pretended deed, purporting to have been executed by said Levi Bebee, are genuine deeds, and were executed and delivered by said William James and said Levi Bebee, according to their import; and that thereby, the title to the above-described tracts of land passed out of said William James, and became vested in said Ephraim DeWitt: whereas, your orators charge that, the truth to be that the said pretended deeds are forgeries and fraudulent, and were manufactured long after the deaths of said William James, Levi Bebee and Ephraim DeWitt, and that no title passed thereby, out of said William James, and that they were forged and fabricated for the purpose of defrauding and swindling your orators in the premises.

All of which doings and actings are contrary to equity, and tend to the manifest injury of your orators.

In tender consideration whereof, and for that your orators remediless by the strict rules of the common law, and can only obtain adequate releif in a Court of Equity.

To the end, therefore, that the said defendants may full and true answer make, (but not upon their oaths, their several oaths
214 being expressly waived,) to all and singular the charges and matters aforesaid, and that said pretended deed of conveyance, purporting to have been executed by said William James, and the pretended deed, purporting to have been executed by said Levi Bebee, may be declared to be forgeries, and may be set aside and annulled, so that the said defendants may be decreed to release and quit claim, by deed, whatever title or interest they claim, respectively, in and to all or any of said described tracts of land, so belonging to your orators respectively, and that your orators may have such other and further relief, in the premises, as to your honor shall seem meet, and agreeable to equity and good conscience.

May it please your honor to grant unto your orators a writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said John B. Strong, Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles E. De Witt, Albert T. Smith, Elizabeth De Witt Smith, Catherine De Witt Johnson, William H. Hutchman, William B. Davis, John D. Walker,

Matthias Gooderson, Henry C. Strong, Michael Secrist, Jacob Hayden, Nathan J. King, George P. Sloan, Frederick Gayer, John Strong, Henry Carpenter, and Hiram Cole, therein and
215 thereby commanding them, and each of them, upon a certain day and under a certain penalty, personally to be and appear before your honor, in this honorable court, then and there to answer all and singular the the said premises, and to stand to and abide by such order and decree therein as to your honor shall seem meet.

And your orators will ever pray, &c.

GOWDY & CHANDLER,
Solicitors for Complainants.

[No. 38,045.] *Exhibit "A."*

Filed Oct. 13th, A. D. 1862, at 2 o'clock p. m.

Know all men by these presents, that I, William James, of the city and county of Albany, and State of New York, for and in consideration of fifteen hundred dollars current money of the United States, to me truly paid on and before the unsealing and delivery of these presents, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey, and confirm unto Levi Beebe, of Green Bush, Rensalear county, State or New York, his heirs and assigns forever, the following tracts or parcels of land lying and being in the Illinois military land district, which quantity of land is more fully described by the following sections, numbers, and ranges:

The northeast quarter of section thirty, eleven north, in
216 range seven east; also, the northeast qr. of section nine, twelve north, one west; also, the northwest quarter of section thirty-three, township nine north, in range three east; also, the southwest qr. of section thirty, ten north, range four east; also, the northwest qr. of section twenty-two, seven north, range three west; also, the the northwest qr. of section three, nine north, range four west; also, the northeast qr. of section twenty-five, fifteen north, range six east; also, the southwest qr. of section two, twelve north, range four west; also, the northwest qr. of section thirteen, six north, range four west; also, the northwest qr. of section five, seven north, range one east; also, the northeast qr. of section thirty-two, four north, range three west; also, the southeast qr. of section twenty-four, five north, range three east; also, the southwest qr. of section thirty-five, fourteen north, range four west; also, the southeast qr. of section thirty-two, two north, range six west; also, the northwest qr. of section thirty-three, ten north, in range seven east; also, the northwest qr. of section twenty-two, six north, range eight west; also, the southeast qr. of section twenty-seven, five north, range one west; also, the northeast qr. of section six, five north, range two west; also, the southeast qr. of section twenty-seven, nine north, range four east; also, the south half of section eight, four
217 north, range two west; also, the southeast qr. of section thirty-four, eight north, range three west; also, the northwest qr. of

section thirty-six, nine north, range four west; also, the north half of section eleven, eleven north, range one west, also, the southeast qr. of section four, four north, range two west; also, the southeast qr. of section thirty-four, ten north, range three west; also, the northeast qr. of section twenty-six, nine north, range three west; also, the northeast qr. of section thirty-three, seven north, range one west: also, the northeast qr. of section twenty-three, seven south, range three west; also, the southeast qr. of section eight, seven north, range six west; also, the south half of section eight, five north, range six west; also, the north half of section eleven, fourteen north, range four west; also, the southeast qr. of section one, fifteen north, range four west; also, the northwest qr. of section eight. seven north, range four west; also, the southwest qr. of section eighteen, six north, range six west; also, the south half section two, twelve north, in range four west; also, the southeast qr. of section nineteen, thirteen north, range six east; also, the north half of section twelve, eleven north, range three west.

To have and to hold the aforesaid described tracts of land, and every part and parcel thereof, with all the appurtenances and privileges thereunto belonging, to him, the said Levi Beebe, his heirs and
218 assigns, for his or their own proper use, benefit, and behoof forever, and to and for no other use, interest, or purpose whatever. And I, William James, for myself, my heirs, executors, and administrators, do covenant, promise, and agree to and with the said Levi Beebe, his heirs and assigns, that I am now the true, lawful, and rightful owner of all and singular the above-mentioned lands, and that he, the said Levi Beebe, his heirs and assigns, shall, and may at all times forever hereafter, peacefully and quietly have, hold, occupy, possess, and enjoy all and singular the lands hereby bargained, sold, transferred, and conveyed, without the lawful let, suit, trouble, hindrance, molestation, interruption, eviction, or disturbance of me, the said William James, or my heirs or assigns, or any other person whatsoever; and that I and my heirs, and all and every person or persons, and his and their heirs, lawfully claiming any estate, right, title, or interest of, in, and to the lands herein described, by, from, and under me, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the request, and at the proper costs and charges in the law of the said Levi Beebe, his heirs and assigns, make, do, sign, seal, and execute, or cause or procure to be made, done, signed, sealed, and executed, all and every further and
219 lawful act or acts, thing or things, device or devices, conveyance or conveyances, assurance or assurances, in the law whatever, for the further, better, and more perfect granting, conveying, releasing, confirming, and assuring the premises aforesaid unto the said Levi Beebe, his heirs and assigns, and to his and their proper use and behoof forever, according to the true intent and meaning of these presents, and to and for no other use, intent, or purpose whatever; and I do hereby authorise and irrevocably empower the said Levi Beebe, his heirs and assigns, to take possession of the aforesaid described tracts of land, either in my name, or his or their name or

names, as may be deemed best calculated to secure to him, the said Levi Beebe, and his heirs forever, the peacable enjoyment thereof.

In testimony of all the foregoing, I, the said William James, hereunto affix my hand and seal at the city of Albany, State of New York, this thirteenth day of October, in the year of our Lord one thousand eight hundred and nineteen.

[SEAL.] WILLIAM JAMES.

Signed, sealed, and delivesed in presence of—
JACOB DOWNING.
ESTES HOWE.

230 STATE OF NEW YORK,
Albany County:

Be it remembered, that on the thirteenth day of October, in the year of our Lord one thousand eight hundred and nineteen, came before me William James, who is to me well known as party grantor of the within deed, and who in person acknowledged that he had signed, sealed, and delivered the same as his free act and deed for the uses and purposes therein expressed. All of which I certify according to law, and allow the same to be recorded.

[L. S.]

ESTES HOWE,
Judge Albany County Com. Pleas Court, Judge ex-officio performing the duties of a Judge of Supreme Court at Chambers.

"Filed Jan'y 19th, 1865.

"T. M. LUSTER, *Cl'k.*"

State of Illinois, Warren County Circuit Court.

JAMES DEXTER, ex'r of will of John B. James *& al.*,
vs.
JOHN B. JAMES, J. V. L. DE WITT, *& al.*
} In Chancery.

We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay, or cause to be paid, all
231 costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this 18th day of January, A. D. 1865.

GOWDY & CHANDLER.

"Filed Jan'y 19th, 1865.

"T. M. LUSTER, *Cl'k.*"

STATE OF ILLINOIS,
Warren County, sct:

The People of the State of Illinois to the sheriff of Warren county, greeting:

We command you to summon Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F.

Smith, Elizabeth De Witt Smith, and Catharine De Witt Johnson, if to be found within your county, personally to be and appear before the Circuit Court of Warren county, on the first day of the next term thereof, to be holden at the court-house in Monmouth, on the third Monday in the month of March next, to answer a bill of complaint, filed in our said Circuit Court, on the chancery side thereof, against them, by James Dexter, ex'r of est. of John B. James *et al.*, and have you then and there this writ, and make a return thereon in what manner you execute the same.

Witness T. M. Luster, Clerk of our said Circuit Court and the seal thereof, at Monmouth, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty-5.

[L. S.] T. M. LUSTER, *Clerk.*

[U. S. stamp, 50 cts.]

232 I cannot, in my county, find any of the within named defendants, Jacob V. L. De Witt, James R. De Witt, Martin De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elizabeth De Witt Smith, and Catharine De Witt Johnson.

March 11, 1865.

DAVID TURNBULL,
Sheriff of Warren County.

"Filed March 20th, 1865.

"T. M. LUSTER, *Clerk*."

STATE OF ILLINOIS,
Warren County, sct:

The People of the State of Illinois to the sheriff of Warren county, greeting:

We command you to summon Michael Secrist, Jacob Hayden, Nathan Jo. King, George P. Sloan, and Frederick Gayer, if to be found in your county, personally to be and appear before the Circuit Court of Warren county, on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the third Monday in the month of March next, to answer a bill of complaint filed in our said Circuit Court, on the chancery side thereof, against them, by James Dexter, executor of the last will and testament of John B. James *et al.*, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, Clerk of our said Circuit Court and the seal thereof, at Monmouth, this 28th day of January, in the year of our Lord one thousand eight hundred and sixty-5

[L. S.] T. M. LUSTER, *Clerk.*
By W. T. GOWDY, *Dep'y.*

[U. S. stamp, 50 cts.]

233 I did, on the 8th day of March, A. D. 1865, serve the within summons by reading the same and delivering a copy to the

within-named Michael Secrist, Jacob Hayden, George P. Sloan, and Frederick Gayer.

DAVID TUNNBULL,
Sheriff of Warren Co., Ill.

I cannot, in my county, find the within named Nathan J. King. March 11, 1865.

DAVID TURNRULL,
Sheriff of Warren Co., Ill.

Filed March 20th, 1865.

T. M. LUSTER, *Cl'k.*

STATE OF ILLINOIS,
Warren County, sct.

The People of the State of Illinois, to the sheriff of Madison County, greeting:

We command you to summon William H. Hutchman and William B. Davis, if to be found in your county, personally to be and appear before the Circuit Court of Warren county on the first day of the next term thereof, to be holden at the court-house in Monmouth, on the third Monday in the month of March next, to answer a bill of complaint filed in our said Circuit Court, on the chancery side thereof, against them, by James Dexter, executor of the last will and testament of John B. James *et al.*, and have you then there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, clerk of our said Circuit Court and
234 the seal thereof, at Monmouth, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty-5.

[L. S.] T. M. LUSTER, *Clerk.*

[U. S. stamp, 50 cts.]

I cannot, in my county, find the within-named Wm. H. Hutchman and Wm. B. Davis, they both having departed this life some time since.

GEORGE RUEGGER,
Sh'ff Madison County, Illinois.

Filed March 2nd, 1865.

T. M. LUSTER, *Clerk.*

STATE OF ILLINOIS,
Warren County, sct:

The People of Illinois, to the sheriff of Bureau county, greeting:

We command you to summon Henry Carpenter, if he be found in your county, personally to be and appear before the Circuit Court of Warren County, on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the third Monday in the month of March next, to answer a bill of complaint filed in our said Circuit Court, on the chancery side thereof, against him, by James Dexter, executor of the last will and testament of John B. James *et al.*, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, clerk of our said Circuit Court and the seal thereof, at Monmouth, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty-5.

[L. S.] T. M. LUSTER, *Clerk.*

[U. S. stamp, 50 cts.]

235 I did, on the 24th day of February, A. D. 1865, serve the within summons by reading this same, and delivering a copy to the within-named Henry Carpenter.

M. G. LOVERIN,
Sheriff of Bureau Co., Ill.
T. M. LUSTER, *Clerk.*

Filed March 2nd, 1865.

STATE OF ILLINOIS, *Warren County, sct:*

The People of the State of Illinois to the Sheriff of McDonough County, greeting:

We command you to summon John D. Walker, if to be found in your county, personally to be and appear before the Circuit Court of Warren County, on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the third Monday of the month of March next, to answer a bill of complaint filed in our said Circuit Court, on the chancery side thereof against him, by James Dexter, executor of the last will and testament of John B. James *et al.*. and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, Clerk of our said Circuit Court, and the seal thereof, at Monmouth, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty-5.

[L. S.] T. M. LUSTER, *Clerk.*

[U. S. 50 cent stamp.]

I did, on the 6th day of February, A. D. 1865, serve the within summons by reading the same, and delivering a copy to the
236 within-named John D. Walker.

G. L. FARWELL,
Sheriff of McDonough Co., Ill.
By S. B. MAMY, *Dep'ty.*

Filed Feb'y 15th, 1865.

T. M. LUSTER, *Clerk.*

STATE OF ILLINOIS, *Warren County, sct:*

The People of the State of Illinois to the Sheriff of Knox County, Illinois:

We command you to summon Hiram Cole, if to be found in your county, personally to be and appear before the Circuit Court of

Warren county, on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the third Monday, in the month of March next, to answer a bill of complaint filed in our said Circuit Court, on the chancery side thereof, against him, by James Dexter, executor of the last will and testament of John B. James *et al.*, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, Clerk of our said Circuit Court and the seal thereof, at Monmouth, this 20th day of January, in the year of our Lord one thousand eight hundred and sixty-5.

[SEAL.] T. M. LUSTER, *Clerk.*

[U. S. 50 cent stamp.]

I did, on the 4th day of Feb., A. D. 1865, serve the within summons by reading the same, and delivering a copy to the within-named Hiram Cole, this 4th day of Feb., 1865.

J'S. SALES, *Sheriff Knox Co., Ill.*

237 Per I. C. COVER, *Dept.*

"Filed Feb'y 15th, 1865.

"T. M. LUSTER, *Clerk.*"

STATE OF ILLINOIS, *Warren County, sct:*

The People of the State of Illinois to the Sheriff of Bureau county, greeting:

We command you to summon John B. Strong, if to be found in your county, personally to be and appear before the Circuit Court of Warren County, on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the third Monday, in the month of March next, to answer a bill of complaint filed in our said Circuit Court, on the chancery side thereof, against him, by James Dexter, executor of John B. James *et al.*, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, Clerk of our said Circuit Court and the seal thereof, at Monmouth, this 15th day of February, in the year of our Lord one thousand eight hundred and sixty-five.

[L. S.] T. M. LUSTER, *Clerk.*

I did, on the 2nd day of March, 1865, serve the within summons by reading the same, and delivering a copy to the within-named John B. Strong.

M. G. LOVERIN,
Sheriff of Bureau County.

"Filed, March 7th, 1865.

"T. M. LUSTER, *Clerk.*"

238 In the Circuit Court thereof, March term, 1865.

JAMES DEXTER, ex'r of est., of JOHN B. James *et al*, *against* JOHN B. STRONG and JACOB V. L. DE WITT *et al.* } In Chancery.

STATE OF ILLINOIS, *Warren County, sct*:

W. C. Gowdy, being duly sworn, deposes and says, that Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elisabeth De Witt Smith, and Catharin De Witt Johnson, defendants in the above-entitled cause, are non-residents of the said State of Illinois, and reside in the State of New York, so that the process of the courts of this State can not be served upon them, and further than this deponent says not.

W. C. GOWDY.

Sworn to and subscribed before me this seventeenth day of January, A. D. 1865.

[L. S.] GEORGE CHANDLER, *Notary Public.*

"Filed January 19th, 1865.

"T. M. LUSTER, *Clerk.*"

In Circuit Court, March term, A. D. 1865.

STATE OF ILLINOIS, *Warren County, sct*:

239 JAMES DEXTER, executor of the last will and testament of John B. James, Mary Ann Post, Minturn Post, Ellen James, James Van Buren, Edward L. Van Buren, Catharine B. Van Buren, by their next friend, Smith T. Van Buren, and Smith S. Van Buren.

vs.

JOHN B. STRONG, JACOB V. L. DE WITT, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles E. De Witt, Albert F. Smith, Elisabeth De Witt Smith, Catharine De Witt Johnson, William H. Hutchman, William B. Davis, John D. Walker, Matthias Gooderson, Henry C. Strong, Michael Secrist, Jacob Hayden, Nathan J. King, George P. Sloan, Frederick Gayer, John Strong, Henry Carpenter, and Henry Cole. } In chancery.

Affidavit having been filed in the office of the clerk of the Circuit Court of Warren county, Illinois, that Jacob V. L. De Witt, James

R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elisabeth De Witt Smith, and Catherine De Witt Johnson, defendants above named, are not residents of the State of Illinois, notice is, therefore, hereby given, to you, the said
240 Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elisabeth De Witt Smith, and Catharine De Witt Johnson, that a bill in chancery has been filed in said court, and that a summons in chancery has been issued thereon against you, as is required by law.

Now, unless you, the said Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elisabeth De Witt Smith, and Catharine De Witt Johnson, shall personally be and appear before said Circuit Court, on the first day of the next term thereof, to be commenced and holden at the court-house, in Monmouth, on the third Monday of March next, and shall then and there plead, answer or demur to said petition, the matters and things therein charged and stated will be taken as confessed against you, and a decree entered according to the prayer of of said petition.

GOWDY & CHANDLER, *Sol's for Comp'ts.*
T. M. LUSTER, *Circuit Clerk*

MONMOUTH, *January 20th, A. D.* 1865.

I, John S. Clark, publisher of "the Monmouth Atlas," a public newspaper, printed and published in the city of Monmouth, county of Warren, and State of Illinois, do hereby certify, that a notice, of which the annexed printed extract is a copy, was published in said newspaper four weeks successively, once in each week; the first
241 publication bearing date Jan'y 27th, 1865.

JNO. S. CLARK.

Printer's fee, $12 50.

"Filed April 3rd, 1866.

"THOM'S M. LUSTER, *Clerk.*"

STATE OF ILLINOIS, *Warren County ss:*

Pleas before the Honorable John S. Thomson, judge of the tenth judicial circuit, of the State of Illinois, in chancery, setting in and for the county of Warren, and State of Illinois, at a Circuit Court began and held at the court-house, in the city of Monmouth, on Monday the 20th day of March, A. D. 1865.

Present, Hon. John S. Thompson, judge; James McKenzie, State's attorney; David Turnbull, sheriff; Thom's M. Luster, clerk.

And afterwards, to wit, on the 25th day of March, A. D. 1865, the following order, among others, was entered of record, to wit:

JAMES DEXTER, executor of JOHN B. James *et al* *vs.* JOHN B. STRONG *et al.* } Chancery.

Ordered by the court that this cause be continued.

The People of the State of Illinois to the sheriff of Bureau county, greeting:

STATE OF ILLINOIS, *Warren County, sct:*

242 We command you to summon John Strong, if to be found in your county, personally to be and appear before the Circuit Court of Warren county, on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the fourth Monday in the month of October next, to answer a bill of complaint, filed in our said Circuit Court, on the chancery side thereof, against him, by James Dexter, executor of the last will and testament of John B. James, deceased, *et al.*, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, clerk of our said Circuit Court and the seal thereof, at Monmouth, this fourth day of April in the year of our Lord, one thousand eight hundred and sixty-five.

[L. S.] THOM'S M. LUSTER, *Clerk.*
By L. O. TOURTELOTTE *D'p'y.*

[50-ct's U. S. stamp.]

I did, on the 11th day of April, 1865, serve the within summons by reading the same, and delivering a copy to the within-named John Strong.

M. G. LOVERIN,
Sheriff of Bureau County.

"Filed April 20th, 1865.

"T. M. LUSTER, *Clerk.*"

STATE OF ILLINOIS, *Warren County, sct:*

The People of the State of Illinois to the sheriff of Warren county, greeting:

243 We command you to summon Henry C. Strong, if to be found in your county, personally to be and appear before the Circuit Court of Warren county, [of Warren connty] on the first day of the next term thereof, to be holden at the court-house, in Monmouth, on the fourth Monday in the month of October next, to answer a bill of complaint filed in our said Circuit Court on the chancery side thereof, against him, by James Dexter, executor of the last will and testament of John B. James, deceased, Mary Ann Post, Minturn Post, Ellen James Van Buren, Edward L. Van Buren, Catharine B. Van Buren, by their next friend Smith T. Van Buren, and Smith T. Van Buren, and have you then and

there this writ, and make return thereon in what manner you execute the same.

Witness T. M. Luster, clerk of our said Circuit Court and the seal thereof, at Monmouth, this 14th day of April, in the year of our Lord one thousand eight hundred and sixty-five.

[L. S.] T. M. LUSTER, *Clerk.*

[50-ct's U. S. stamp.]

I cannot, in my county, find the within-named Henry C. Strong. Ap. 14th, 1865.

DAVID SURNBULL,
Sheriff of Warren County.

"Filed April 14th, 1865.

"T. M. LUSTER, *Clerk.*"

Circuit Court of Warren county.

JAMES DEXTER, ex'r *et al*,
vs.
JOHN B. STRONG *et al.* } In chancery.

244 STATE OF ILLINOIS,
County of Cook, city of Chicago, ss:

William C. Gowdy, being duly sworn on his oath, says that he is solicitor for the complainants in the above-entitled cause, and that Henry C. Strong, one of said defendants, resides without the said State of Illinois, and cannot be found within said State, so that the process of said court cannot be served upon him, and further saith not.

W. C. GOWDY.

Subscribed and sworn to before me on this day of April, 1865.

[L. S.] GEORGE CHANDLER,
Notary Public.

"Filed April 14, 1865.

"T. M. LUSTER, *Clerk.*"

Chancery notice.—Warren Circuit Court, October term, A. D. 1865.

STATE OF ILLINOIS, *Warren County ss:*

JAMES DEXTER, executor of the last will and testament of John B. James, deceased, Mary Ann Post, Minturn Post, Ellen James Van Buren, Edward L. Van Buren, Catharine B. Van Buren by their next friend Smith T. Van Buren, and Smith T. Van Buren,

vs.

JOHN B. STRONG, JACOB V. L. DE WITT, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles E. De Witt, Albert F. Smith, Elizabeth De Witt, Catharine De Witt Johnson, William H. Hutchman, William B. Davis, John D. Walker, Matthias Gooderson, Henry C. Strong, Micheal Seacrist, Jacob Hayden, Nathan J. King, George P. Sloan, Frederick Gayer, John Strong, Henry Carpenter, and Hiram Cole. } In Chancery.

245

Affidavit of the non-residence of Henry C. Strong, one of the defendants above-named, having been filed in the office of the clerk of the Circuit Court of Warren county, Illinois, notice is hereby given to the said Henry C. Strong that the complainants filed their bill of complaint in said court, on the chancery side thereof, on the 19th day of January, A. D. 1865, and that a summon has this day been issued out of said court against the said Henry C. Strong, returnable on the fourth Monday of October next, (1865.) as is by law required.

Now unless you, the said Henry C. Strong, shall personally be and appear before the said Circuit Court of Warren county on the first day of the October term of said court, to be holden on the fourth Monday in October, A. D. 1865, and plead answer, or demur to the said complainant's bill of complaint, the same, and the matters and

246

things therein charged and stated, will be taken as confessed, and a decree entered against you according to the prayer of said bill.

April 14, 1865.

T. M. LUSTER, *Clerk.*
GOWDY & CHANDLER,
Compl'ts' Solicitors.

MONMOUTH, *May 12th*, 1865.

I, A. H. Swain, publisher of the "Monmouth Review," a weekly paper published in the city of Monmouth, Warren County, State of Illinois, do hereby certify that the annexed advertisement was pub-

lished four successive weeks in said paper, the first publication bearing date April 14th, 1865.

Printer's fee, $12 50.

Rec'd payment.

A. H. SWAIN.

"Filed Apr. 3d, 1866.

"THOS. M. LUSTER, *Cl'k.*"

Warren Circuit Court in chancery sitting.

STATE OF ILLINOIS, *Warren County:*

JAMES DEXTER, executor of the last will and testament of John B. James, *et al.*,
vs.
JOHN B. STRONG, JACOB V. L. DE WITT, James R. De Witt, Maria De Witt, Julia C. de Witt, Charles E. de Witt, Albert F. Smith, Elizabeth De Witt Smith, Catharine De Witt Johnson, William H. Hutchman, William B. Davis, John D. Walker, Matthias Gooderson, Henry C. Strong,
247 Michael Secrist, Jacob Hayden, Nathan J. King, George P. Sloan, Frederic Gayer, John Strong, Henry Carpenter and Hiram Cole.

All of the defendants, jointly and separately, (unless some one of the above defendants should, by themselves or their solicitors, fill a separate answer; if either of the defendants should so, then said answer so separately filed shall be their answer in place of this, otherwise the following shall be the separate answer for each of the above defendants now, and at all times hereafter, each one separately, saving themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill of complaints by complainants filed, to which this is an answer.

In answer thereunto, or to so much thereof as these defendants are each advised it is material or necessary for them to make answer to, severally answering, saith:

That they are not sufficiently advised, and do not admit that James Dexter is, or ever was, the executor of John B. James.

These defendants, further answering, deny that John B. James is, or was, a resident of Albany, New York, or that he is dead.

Defendants, further answering, deny that John B. James
248 ever made any will either in the State of Illinois or in the State of New York.

These defendants, further answering, say they are not advised as to whether Post and others mentioned in complainants are the heirs of John B. James or not.

These defendants, further answering, say that they admit that it is

true, as stated in complainant's bill, that William James was formerly a resident of the State of New York and of the city of Albany.

These defendants, further answering, say that said William James resided at Albany, New York, on the 13th day of October, A. D. 1819, in which place and at which time, for a valuable consideration therein mentioned, he deeded to Ephraim De Witt the lands mentioned in the deed by him executed, and marked Exhibit "A" in complainant's bill of complaint.

These defendants, further answering, do most positively deny that the above-mentioned William James died in December, A. D. 1832, seized in fee-simple, or had any right or claim to any of the land or lands mentioned in complainant's bill, laying in the State of Illinois.

These defendants admit that the title to the lands mentioned in complainant's bill was, by William James, derived from government; that is, all those lands of which he was on the 13th day of
249 October, A. D. 1819, seized in fee-simple, and that he he did, by deed, as aforesaid, at the above date, sell the same to the said Ephraim De Witt, as aforesaid, for a valuable consideration; as to whether said William James died intestate after this date, or as to whether there were proceedings had in New York to divide off property in Illinois which he did not own, and which an honest dieing man, (which we suppose he was,) dare not, in the presence of his God, will to his children or any one else; so there may have been proceedings in New York to try to cheat Ephraim De Witt out of his land that he had bought, and paid for, and, by that means, accomplish the end which a dieing man dare not do.

But of these proceedings in New York, and of the decease of said William James, these defendants are not advised, and cannot admit the statement in complainants' bill.

Said defendants cannot admit who were the heirs-at-law of William James. They therefore deny that the persons mentioned were his heirs-at-law.

These defendants, further answering, most positively deny the statement made in complainants' bill, that John B. James and Mary Ellen James, his wife, filed a bill of complaint in the Circuit Court of Pike county, in Illinois, upon the chancery side thereof,
250 for the purpose of obtaining a partition of the lands and real estate of William James, deceased, either in September term, 1843, or at any time prior to said time.

These defendants, further answering, charge that no such bill for partition is on the files of said Circuit Court of Pike county, and that the complainants cannot, dare not, produce that bill mentioned in this honorable court.

These defendants, further answering, say that if ever there was such a bill filed by John B. James and Mary Ellen James, in the Pike Circuit Court, as above mentioned, the whole proceedings were fraudulent, and gotten up for the purpose of defrauding Ephraim De Witt out of his lands in Illinois, as above mentioned; and as soon as a decree could be had, if ever there was a bill filed, as above mentioned, by complainant, that bill was stolen from the

records of that court, so that the fraud might not be detected and proven upon the parties who filed it.

And that defendants, further answering, charge that the complainants in the bill, to which this is an answer, know that there is no such bill of complaint as mentioned on file in Pike county.

The complainants to said bill make these charges, knowing that they cannot prove that there is such a bill on file for partition in Pike county.

But they make the charge for the purpose of injuring said
251 Ephraim De Witt, by his heirs, from selling their lands, which he honestly bought, and paid for, from William Jones, above mentioned, and others.

These defendants deny that there was any such partition, as mentioned in complainants' bill, among the heirs of William James as above mentioned.

The defendants, further answering, say that there was no such partition or lands mentioned by Minturn Post or John B. James, obtained any interest, as mentioned in the Minturn quarter deed referred to in complainants' bill.

These defendants, further answering, deny that John B. James ever made any will in the State of New York.

These defendants admit that John B. James departed this life in Chicago, in the State of Illinois, in 1836, as stated in complainants' bill.

But these defendants, answering, say, that they deny that ever John B. James made any will which was proven in New York, or anywhere else.

These defendants admit, charge, and show to this honorable court, that on or about 1856, there was a written instrument placed on the records of the Surrogate's Court, at Albany, New York, which written instrument had no date to it at all. Said instrument purported to be the last will of John B. James, and appointed James Dexter executor and trustee, &c. But most unfortunately for this will, the following certificate, in these words and figures, was attached
252 to said pretended will, to wit:

"The above instrument was dated the 23d day of July, 1855. Subscribed by the above-named John B. James in our presence, who, at his request, and in his presence, and the presence of each other, there subscribed our name as witness thereto, the said John B. James at the time declaring the same to be his last will and testament.

"H. Q. LANSING, *of the City of Albany.*
"J. M. LOVETT, *of the City of Albany.*"

These defendants, further answering, say that if John B. James did make a will, and the above witnesses subscribed their names, with the said John B. James, the testator, then that will had a date as above, and was not the instrument to which the complainants' bill refers.

These defendants, further answering, say, and charge that if John B. James made an original will, as alleged in said certificate signed as above, that this certificate signed by these witnesses was torn off of said original will of John B. James, and stuck to this fraudulent forged will, filed at Albany, New York, to which complainants refer in their bill, in which forged will they get there claim to the lands above mentioned belonging to the heirs of Ephraim De Witt.

These defendants, further charge and answering, say, that said fraudulent will of said John B. James, in complainants' bill
253 mentioned, is not on the files of the Albany Surrogate's Court, in New York.

But on the 30th of May, A. D. 1856, one of the complainant's in the foregoing bill of complaint, James Dexter, the pretended trustee and executor of the will aforesaid, took the above-mentioned will from the Surrogate's Court, in New York, where it was placed for record, and has not permitted said bogus forged will, which is proven to be such by their own evidence, to remain or to be seen in said court since.

These defendants, further answering, deny that the will of John B. James, mentioned in complainants' bill, as recorded in Albany, New York, ever invested James Dexter with the above-mentioned lands, mentioned in complainants' bill, or any other lands.

These defendants, further answering, say that the whole records, to which complainants refer, show the instrument to which complainants refer, and which is said to be the will of John B. James, and of which will James Dexter is executor and trustee, to be a groce forgery of John B. James's will, if he ever made one.

These defendants, further answering, say they are not advised as to whether or not Edward L. Van Buren, and others mentioned, are the heirs of Mary Ellen King, or whether or not she is dead, and do not admit the statement, nor do they admit their minority.

54 The foregoing considered, these defendants further answering, say, that they understand it to be a well settled rule in the Courts of Equity, that before complainants can come into court and pick the mote out of their brother's eye, they must pull the ear of corn out of their own eyes, husk and all, that they may more clerley see the mote in these defendants' eyes.

These defendants, further answering, say that the complainants in the forgoing bill can never whash their hands from the facts set forth in this answer, or if they could they would at once see clearly that there was not even a mote in their brother's, the defendant's, eyes.

These defendants, further answering, say that they admit John B. Strong filed certain deeds for record, as mention in complainants' bill, and they also admit that said deeds are genuine.

These defendants. further answering, also admit that Levi Beebe executed a deed in 1822, deeding lands therein mentioned, to Ephraim De Witt, which deed has been duly recorded in Bureau county, Illinois, and that said deed is a genuine deed.

These defendants, further answering, admit that Ephraim De Witt has departed this life, leaving surviving him, the heirs-at-law mentioned in complainants' bill.

255 These defendants, further answering, say that the deed, mentioned by complainants, made by William James and Levi Beebe, are true genuine deeds, and were made by them at the times therein mentioned. These defendants deny that there was any forgery about the deeds mentioned in complainants' bill, or that said deeds have been made since the dates mentioned in said deeds.

These defendants, further answering, say that the above-mentioned deeds were placed upon the records not to defraud or keep any person from selling land which belonged to him. But it was known to these defendants that some one, to these defendants unknown, had placed some sort of a bill of petition for partition upon the records of Pike county, Illinois, (if ever there was such a bill as mentioned by complainants,) and then fearing that the fraud should be detected, some one to these defendants unknown, stole said bill from said records, (as these defendants believe,) and no such a bill as mentioned by complainants now exists of record in said county.

These defendants, further answering, say that some one to these defendants unknown, forged the will above mentioned, referred to as the will of John B. James, without any dates; and afterwards took said will from the records so as to prevent detection, all of which was don for the purpose of getting the lands mentioned in
256 complainants' bill, some quarters as shown belong to these defendants.

These defendants, answering, say that these deeds above mentioned were placed upon the records aforesaid, to protect these defendants, and to prevent complainants and others from taking advantage of the frauds and forgeries above stated, and for their protection, and not unjustly to injure complainants.

These defendants, further answering, say that John D. Walker, Wm. H. Hutchman, Michael Secchees, William B. Davis, and others mentioned in complainants' bill, who claim through the Beebe and William James deeds, above mentioned, have a just right not only to claim their lands thus honestly bought and paid for, but they have an honest just right to claim the protection of this honorable court in equity against the malicious and false charges which are made against them, and the title of their lands to injure the sales of said lands in market.

These defendants, further answering, deny that James Dexter is now or ever was invested with the title in fee to the lands mentioned in the 19 quarter deed or to any of said lands as mentioned in complainants' bill.

These defendants, further answering, say that Ellen James Van Buren, Edward L. Van Buren, and others mentioned in com-
257 plainants' bill are not seized in fee of said lands, or have any title or interest in them; that all the interest that they appear to have comes through that bogus will, pretended to be made by John B. James and through that fraudulent partition bill in Pike county, formerly, as mentioned, now stolen from the records, because William James had long since deeded said lands away.

This defendants, finally more fully answering, say that the Beebe

and William James deed, mentioned in complainants' bill as forgeries are genuine deeds, made for a valuable consideration, and signed, sealed, and delivered as such, and have remained for years unmolested; they are not forgeries, while these defendants charge that a more daring fraud never was attempted than that attempted by these complainants in trying to enforce that partition when they must know that the whole is a swindle; and that will which pretends to appoint James Dexter, executor, and gives him these lands, a bogus will without date, contradicted by the evidence which attempts to give it vitality.

There is as strange mysterious protection of an Almighty hand, which here hangs Haman on the very gallows which he had erected to hang these defendants on.

258 These defendants, further answering, say and admit as stated in complainants' bill, that there is no earthly chance for them at common law, and still much less in a Court of Equity.

These defendants, further answering, deny that there is, or ever was, any fabrications, forgeries, ever made in said deed. They further deny that they have been gotten up or forged since the dates therein mentioned as charged in said bill of complaint.

Without this that there is any other cause, matter, or thing in said complainants' bill of complaint, contained material or necessary for these defendants to answer, and not herein and hereby, well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge of these defendants, all which matters and things, these defendants are ready and willing to aver, mantain, and prove, as this honorable court shall direct.

And humbly request to be hence dismissed with their reasonable costs and charges in this behalf wrongfully sustained.

JNO. M. GRIMES.
Sol. for Def'ts.

"Filed, Oct. 21, 1865.

"THOS. M. LUSTER, *Cl'k.*"

STATE OF ILLINOIS, *Warren County, ss*:

Pleas before the Honorable John S. Thomson, Judge of the
259 tenth judicial circuit of the State of Illinois, in chancery, sitting, in and for the county of Warren, and State of Illinois, at a Circuit Court began and held at the court-house, in the city of Monmouth, on Monday, the 23rd day of October, 1865.

Present, Hon. John S. Thomson, Judge; James A. McKenzie, State's Attorney; David Turnbull, Sheriff; Thos. M. Luster, Clerk.

And afterwards, to wit, on the 23d day of October, A. D. 1865, the following order, among others, was entered of record, to wit:

JAMES DEXTER, executor of JOHN B. JAMES, *et al.*, *vs.* JOHN B. STRONG *et al.* } Chancery.

Ordered by the court that this cause be continued.

STATE OF ILLINOIS, *Warren County, ss*:

Warren Cir. Court, Mr. Tr., 1866.

JAMES DEXTER, ex. &c. *et al* *vs.* JOHN B. STRONG, *et al.*

And now this cause coming on to be heard upon the motion
260 of the complainants to strike the answer of defendants filed herein by their solicitor, John M. Grimes, because said answer was slanderous and impertent, and the court being fully advised in the premises, and having heard the arguments of counsel,

It is therefore ordered, adjudged, and decreed by the court now here, that said answer be, and is hereby, stricken from the files of this court.

MR. 29*th* 1866. JOHN S. THOMPSON.

"Filed M'ch 29th 1866.

"THOS. M. LUSTER, *Cl'k.*"

STATE OF ILLINOIS, *Warren County ss.*

Pleas before the Honorable John S. Thompson, Judge of the tenth judicial circuit of the State of Illinois, in chancery sitting, in and for the county of Warren and State of Illinois, at a Circuit Court begun and held at the court-house, in the city of Monmouth, on Monday the 19th day of March 1866.

Present—Hon. John S. Thompson, Judge, James A. McKenzie, State's attorney, David Turnbull, Sheriff, Thos. M. Luster, clerk.

And afterwards to wit, on the 3d day of April, A. D. 1866, the following order, among others, was entered of record to wit:

261 JAMES DEXTER, executor of John B. James, *et al.*, *vs.* JOHN B. STRONG, *et al.* } In Chancery.

This day this cause coming on again to be heard, and it appearing to the court that the following defendants to wit, Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elisabeth De Witt Smith, Catherine De Witt Johnson, Henry C. Strong, Henry Carpenter, Hiram Cole and John D. Walker, had all been duly served according to law, and all and each

of said defendants being three times solemnly called in open court, came not, nor any person for them, to defend this suit, but made default,

Ordered by the court that this cause be continued until the next term thereof.

Circuit Court, October Term, 1866.

262 STATE OF ILLINOIS, *Warren county*.

JAMES DEXTER, ex'r, &c., *vs.* JOHN B. STRONG *al.* } In Chancery.

William C. Gowdy, being duly sworn, deposes and says: That the defendant Matthias Gooderson, as he is informed and believes, is a non-resident of the State of Illinois.

W. C. GOWDY.

Subscribed and sworn to before me, the undersigned notary public, on this 3d day of August, 1866.

Witness my notarial seal.

[L. S.] EDWARD S. TAYLOR, *Notary Public*.

"Filed August 8th 1866.

"THOS. M. LUSTER, *Cl'k*."

Chancery notice.

Warren Circuit Court, October term, A. D. 1866.

STATE OF ILLINOIS, *Warren county ss:*

JAMES DEXTER, executor of the last will and testament of John B. James, deceased, Mary Ann Post, Minturn Post, Ellen James Van Buren, Edward L. Van Buren, Catherine B. Van Buren, by their next friend Smith T. Van Buren, and Smith T. Van Buren.

vs.

JOHN B. STRONG, JACOB V. L. DE WITT, JAMES R. De Witt, Maria De Witt, Julia C.
263 De Witt, Charles E. De Witt, Albert F. Smith, Elizabeth De Witt Smith, Catherine De Witt Johnson, William H. Hutchman, William B. Davis, John D. Walker, Matthias Gooderson, Henry C. Strong, Michael Secrist, Jacob Hayden, Nathan J. King, George P. Sloan, Frederick Gayer, John Strong, Henry Carpenter, and Hiram Cole. } In Chancery.

Affidavit of the non-residence of Matthias Gooderson, one of the defendants above named, having been filed in the office of the clerk,

of the Circuit Court of Warren county, Illinois, notice is hereby given to the said Matthias Gooderson, that the complainants filed their bill of complaint in said court, on the chancery side thereof, on the 19th day of January, A. D. 1865, and that a summons has this day been issued out of said court against the said Matthias Gooderson, returnable on the fourth Monday of October next, 1866, as is by law required.

Now unless you, the said Matthias Gooderson, shall personally be and appear before the Circuit Court of Warren county, on the first day of the October term of said court, to be holden on the fourth Monday in October, A. D. 1866, and plead, answer, or
264 demur to the said complainants' bill of complaint, the same and the matters and things therein charged and stated will be taken as confessed, and a decree entered againt you according to the prayer of said bill.

Aug. 17, 1865.

T. M. LUSTER, *Clerk.*
GOWDY & CHANDLER,
Compl'ts Sol.

MONMOUTH, *Sept. 18th*, 1866.

I, A. H. Swain, publisher of the "Monmouth Review," a weekly paper published in the city of Monmouth, Warren county, State of Illinois, do hereby certify that the annexed advertisement was published 4 successive weeks in said paper, the first publication bearing date Aug. 17th, 1866.

Printer's fee, $12 50.
Rec'd payment.

A. H. SWAIN.

"Filed Oct. 22, 1866.

"THOS. M. LUSTER, *Clk.*"

Circuit Court, October term, 1866.

JAMES DEXTER, executor of JOHN B. James, *et al.*, *vs.* JOHN B. STRONG *et al.* } In Chancery.

STATE OF ILLINOIS, *Warren County:*

This cause coming on, and it appearing to the court that a notice to Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elizabeth De
265 Witt Smith, and Catharine De Witt Johnson, who were non-residents, was published in the "Monmouth Atlas," a public newspaper, printed and published in the city of Monmouth, county of Warren, and State of Illinois, for four weeks successively, once in each week, the first publication bearing date January 27th, 1865, to be and appear before this court, on the third Monday of March, A. D. 1865; and it further appearing that a like notice was published to

Henry C. Strong, who was a non-resident, in the Monmouth Review, a public newspaper published in said city of Monmouth, for four successive weeks, the first publication bearing date April 14, 1865, to appear before this court on the fourth Monday of October, A. D. 1865; and it further appearing that a like notice was published to Matthias Gooderson, who was a non-resident, in the last-named newspaper, for four successive weeks, the first publication bearing date August 17th, 1866, to be and appear before this court on the fourth Monday of October, 1866; and it further appearing that a summons has been issued against all of said defendants named in said notices, and has been returned not served; and it further appearing that writs of summons, returnable on the third Monday of March, 1865, have been served, as required by law, on John B. Strong, Hiram Cole, John D. Walker, Henry Carpenter, Michael Secrist, Jacob
266 Hayden, George P. Sloan, and Frederic Gayer, and a summons, returnable on the fourth Monday of October, 1865, was served, as required by law, on John Strong; and it further appearing that the said George P. Sloan, and Frederick Gayer appeared and filed an answer on the 28th day of May, 1866; that Jacob Hayden appeared and filed a disclaimer on the 22d day of March, 1865; and that Michael Secrist also appeared and filed a disclaimer on the 29th March, 1866; and that all the other defendants appeared and filed an answer on the 21st day of October, 1865, which was stricken from the files of the court on the 29th day of March, 1866; and it further appearing that a default was taken and entered against the defendants, Jacob V. L. De Witt, James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elizabeth De Witt Smith, Catharine De Witt Johnson, and Henry C. Strong, for want of any further answer, on the 3d day of April, 1866, and that a default was taken and entered against the defendants, John B. Strong, Matthias Gooderson, and John Strong, for want of further answer.

It is therefore ordered, adjudged, and decreed, that the bill of complaint, and the matters and things therein contained, be taken for confessed against the said defendants, Jacob V. L. De Witt,
267 James R. De Witt, Maria De Witt, Julia C. De Witt, Charles De Witt, Albert F. Smith, Elizabeth De Witt Smith, Catharine De Witt Johnson, Henry C. Strong, John B. Strong, John Strong, Matthias Gooderson, Henry Carpenter, Hiram Cole, and John D. Walker; and it further ordered, adjudged, and decreed that this cause be referred to the master in chancery, to take such evidence as may be offered by the complainants and the defendants, who have been defaulted, and that the said master examine the evidence heretofore taken, as well as that taken by himself, and report his conclusions thereon to the court.

C. L. HIGBEE.

"Filed Oct. 24th, 1866.

"THOS. M. LUSTER, *Clk.*"

The report of the Master in Chancery.

Circuit Court, October term, 1866.—In Chancery.

STATE OF ILLINOIS, *Warren County:*

JAMES DEXTER, executor of JOHN B. JAMES, *et al.*
vs.
JOHN B. STRONG, *et al.*

To the Honorable Judge of the Circuit Court in and for the county of Warren, and State of Illinois:

The undersigned, master in chancery for said court, to
268 whom this cause was referred by a decree entered at this term to take and report evidence, and to examine the evidence heretofore taken, and report my conclusions thereon, would respectfully report, that I have been attended at my office by the solicitors for the complainants, and that in behalf of said complainants a copy of Exhibit A, attached to the bill, purporting to be a deed executed by William James to Levi Beebe, dated October 13th, 1819, was produced in evidence and proved to have been first recorded in the year 1862; first in Warren county, September 30, 1862, and next in Knox county October 13, 1862; that a copy of a deed described in the bill, as an instrument purporting to be a deed executed by Levi Beebe to Ephraim De Witt, bearing date November, 1822, and purporting to release and quit-claim all tracts of land in the State of Illinois, in which the said Levi Beebe had any interest, which was first recorded in October, 1862, was produced in evidence.

And I further report that it appears from the deposition of the Rev. William James, that the said William James, who is described in said instruments of writing, purporting to be deeds, died in Albany, New York, December 19, 1832, leaving eleven heirs, namely, three grand-children, Mary Ann Post, daughter Ellen James King,
who died in 1823, and Lydia James, and Robert W. James,
269 children of Robert James, who died in 1821; five sons, John B. James, Edward James, Henry James, William James, and Augustus James, and three daughters, Jeannette Barber, Catherine Temple, and Ellen King James, of whom Lydia James married Henry Mason, Jeannette was intermarried with William H. Barber, Catharine was intermarried with Robert W. Temple, and Ellen King James married Smith T. Van Buren; and it further appears from the evidence of Francis C. Moore, and other evidence, that the tracts of land described in the bill have been claimed by said heirs from the time of the death of said William James, as their property, until a partition was made by the decree of the Circuit Court of Pike county, rendered in 1842; and thereafter the said lands were claimed by the heirs to whom the same were allotted, as hereafter stated, and during all the time down to the present time, such claim has been asserted, taxes have been paid, and some of the tracts so derived from William James have been, from time to time, sold; and it further appears that a petition for partition was filed by John B. James against the said Mary Ann King, Smith T. Van Buren, and Ellen K. Van Buren,

and others of said heirs, for the partition of the tracts of land described in the bill of complaint, and a large number of other
270 lands derived by descent from the said William James, for the September Term, A. D. 1843, of the Pike county Circuit Court, and such proceedings were therein had that the lands were allotted to the said John B. James, Mary Ann King, and Ellen K. Van Buren, as alleged in the bill of complaint. And it further appears that during the pendency of said proceedings the said Mary Ann King married Minturn Post, and he was made a party thereto, and that Ellen K. Van Buren died in 1849, leaving her husband and three children, Ellen James Van Buren, Edward L. Van Buren, and Catharine B. Van Buren, surviving, and that John B. James died testate in May, 1856, that his will has been proved and recorded, as alleged in the bill of complaint, and that James Dexter is, and was, as alleged in the bill, the executor of John B. James.

The undersigned further reports that it appears to him, from the evidence, that the defendant, John B. Strong, has been acting as the attorney-in-fact for the persons described in the bill as the heirs of Ephraim De Witt for the last ten years or more, and has been their sole representative with reference to the lands and matters in controversy in this suit; and it further appears that said instruments of writing, purporting to be deeds, executed by William James to
271 Levi Beebe, and by Levi Beebe to Ephraim De Witt, were filed for record by said John B. Strong, and further, that said John B. Strong has undertaken by two affidavits, made and used in the Circuit Court of the United States for the northern district of Illinois, to state where he procured said instruments of writing purporting to be deeds, copies of which affidavits are hereto attached as Exhibits 1 and 2.

And the undersigned would further report, that the said Strong, in substance, appears to allege that said deeds were sent by Ephraim DeWitt by one Eliphalet Hawley, as his agent, from Albany, New York, to Illinois, to be recorded; that said Hawley was killed, or drowned, shortly afterwards, in Illinois, on the road from Springfield to Schuyler County, and James Adams, of Sangamon county, was appointed his administrator, into whose hands said alleged deeds fell, before they were recorded; that James Adams was a Mormon, and delivered these papers, together with others, and among them, the orignal administrator's bond, in the estate of Eliphalet Hawley, and a paid note that had been filed as a voucher, the Probate Court of Sangamon, to Edward Dixon, who was a Mormon, and the hus-
272 band of the adopted daughter of Joe Smith, the Mormon prophet and leader, and that in the year 1852, the said John B. Strong obtained all of said papers from the said Edward Dixon, in Galveston, Texas.

And it further appears from the depostion of Lucien B. Adams, and Eliphalet Hawley, and the other evidence in the case, that the statement of said John B. Strong is false in this: that the said Eliphalet Hawley did not come from New York to Illinois, as the agent of Ephraim DeWitt; that the said Eliphalet Hawley did not and

could not have brought the said alleged deed from Levi Bebee to Ephraim DeWitt to Illinois for record, because he left Albany, N. Y., in the fall of 1821, reached Illinois in the spring of 1822, and was drowned in June, 1822, before said deed purports be executed; that James Adams never had any such deeds or papers in his possession, nor in the possession of his executors, after his death, in 1843.

The statement that the original administrator's bond and vouchers were obtained from Dixon, in Texas, with the alleged deeds, cannot be true, because said papers were not in the power or control of James Adams, but belong to the files of the County Court of Sangamon county, for probate business, and must have been stolen therefrom.

It further appears from said statement of the said John B.
273 Strong, that he has had the possession of said alleged deeds, from 1852 until in October, 1862, but they were not, during that time, recorded, or in any way disclosed, although he was asserting in behalf of the heirs of Ephraim DeWitt, to the lands in controversy, and the original of said deeds have not been seen or examined, but are alleged by said Strong to have been lost.

The undersigned would report that, from the foregoing facts, he is of the opinion that said instruments of writing described in the bill, and alleged to be forgeries, were never executed by the parties grantor therein, respectively, but that said papers are forged and fraudulent, and constitute a cloud on the title of the complainants to the lands described in the bill.

The undersigned recommends that a decree be granted, according to the prayer of the bill.

JOS. K. RIPLEY,
Master in Chancery.

$5 00 fee paid comp. sols.

United States Circuit Court, northern district of Illinois, to the October Term, A. D. 1863.

MINTURN POST
vs.
JOHN D. WALKER.

STATE OF ILLINOIS, *Kane County, ss.*

Personally appeared before me, this 2d day of October, A.
274 D. 1865, John B. Strong, a resident of Neponset, Bureau county, Illinois, aged about 43 years, who being by me first duly sworn, according to law, makes the following affidavit, to be used in the above court in the above case:

That about, or near, the year 1852, in the fall, as nearly as he can recollect, affiant obtained of Edward Dixon, who was formerly of Nauvoo, Illinois, and who was connected with the Mormons, a large number of deeds and other papers, pertaining to lands in Illinois, while at Galveston, in the State of Texas, among which was a deed from Wm. James to Levi Beebe, conveying a large list of lands in Illinois, and

dated October 13th, A. D. 1819, which is now on record in the recorder's office, of this county, in book 55, on page 121.

And also another deed from Levi Beebe to Ephraim DeWitt, conveying all lands in which he is interested, in the State of Illinois, which is now on record, in the recorder's office of this county, in book 53, on page 431, and bearing date November 1st, A. D. 1822; that after obtaining a power of attorney from the heirs of Ephraim DeWitt, said affiant returned to Texas, in the fall of 1857, bearing the above-described deeds, with other papers pertaining to the same lands in Senaca Co., Ohio.

That on his return from Texas, in the month of June, A.
275 D. 1858, he was a passenger on the steamer Pensylvania, which was blown up, and then and there affiant lost other valuable papers pertaining to the same land; but the within-named deeds being in Ohio, were saved, so they remained in his possession, from the time that he obtained them of the said Dixon, in Texas, until they were recorded, and afterwards, until they were stolen, with his carpet-sack, while on his way from Knoxville to Chicago, to attend court. Further deponent saith not.

JOHN B. STRONG.

Subscribed and sworn to before me this 2d day of October, A. D. 1863.

[SEAL.] JOHN H. LEWIS,
Circuit Cl'k.
Per SAM. L. CHARLES,
Dep't Cl'k.

Endorsed: "Opened for Mr. Grimes, def't's att'y, Oct. 6, 1863. Wm. H. Bradley, Cl'k."

NORTHERN DISTRICT OF ILLINOIS, *ss.*

William H. Bradley, clerk of the Circuit Court of the United States, within and for the said northern district of Illinois, do hereby certify that the foregoing transcript to be a true and correct copy of the original affidavit of John B. Strong, filed in said court, in said cause of Minturn Post *vs.* John D. Walker, therein pending,
276 as the original of the same now remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this 18th day of October, A. D. 1866.

[L. S.] WM. H. BEADLEY, *Clerk.*

[5-ct. U. S. stamp.]

"A."

Know all men by these presents, that we, James Adams, Elizabeth Hawley, Matthew Rogers, and Andrew Gardner, are held and firmly bound unto the people of the State of Illinois in the sum of one thousand dollars, current money of the State of Illinois, for the payment of which, well and truly to be made, we, and each of us, bind

ourselves, our and each of our heirs, executors and administrators, jointly, severally, and firmly by these presents.

Sealed with our seals, and dated this fifteenth day of July, in the year of our Lord 1822.

The condition of this obligation is such, that if the within bounden James Adams and Elizabeth Hawley, administrators of all and singular, the goods, chattels, and credits of Eliphalet Hawley, deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which have, or shall come to the hands, possession, or knowledge of them,
277 the said James Adams and Elizabeth Hawley, or into the hands and possession of any other person or persons for them, and the same so made do exhibit, or cause to be exhibited, in the Court of Probate, of the county of Sangamon, on or before the fifteenth day of October next ensuing, and the same goods, chattels, and credits of the said deceased at the time of his death, which at any time hereafter shall come to the hands or possession of the said James Adams and Elizabeth Hawley, or into the hands and possession of any other person or persons for them, do well and truly administer according to law, and further do make or cause to be made, a true and just account of their said administration, at or before the fifteenth day of July, in 1823, and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon said administrator's account, (the same being first examined and allowed by the said Court of Probate of the said county,) shall deliver and pay unto such person or persons, respectively, as the said Court of Probate, in the said county, by its decree or sentence, pursuant to the true intent and meaning by law shall limit and appoint; and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named, do exhibit the same into the said court, making request
278 to have it allowed and approved accordingly, of the said James Adams and Elizabeth Hawley, within bound, being thereunto required, do render and deliver the said letters of administration, approbation of such testament being first had and made in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

J. ADAMS. [SEAL.]
ELIZABETH HAWLEY. [SEAL.]
MATTHEW ROGERS. [SEAL.]
ANDREW GARDNER. [SEAL.]

Signed, sealed, and delivered in presence of—
ZACHARIAH PETER.

Endorsed: "J. Adams, E. Hawley, M. Rogers, A. Gardner. Bond to people. Filed, Dec'b. 1863.

"WM. H. BRADLEY, *Cl'k.*"

"B."

$45,62½ ALBANY, *March 3d*, 1818.

I promise to pay to John L. Bogardus, or order, forty-five dollars and sixty-two ½ and half cents, for value received, being the amount due on George Monroe's Raggin's and Dyar business.

ELIPHALET HAWLEY.

(B.)

279 Endorsed: "No. 18; voucher Eliphalet Hawley's note, $45 62½; int. up to the 4th July, 1823, at 7 per cent., $17 01½—$62 64."

Filed Dec'b, 1863.

W. H. BRADLEY, *Cl'k.*

STATE OF ILLINOIS, *Cook County, ss:*

Personally appeared before me, John B. Strong, a resident of Neponset, Bureau county, Illinois, aged 43 years past, land agent, who, being by me first duly sworn according to law, says:

That the deed from Jno. Walworth to Levi Beebe, dated July 5th, 1819, was in his hands a number of years; that he got this deed, together with other deeds, some of which are mentioned in a former affidavit, made by this affiant, from Edward Dixon, who was the reputed husband of Jo Smith, adopted daughter, formerly of Nauvoo, Hancock county, Illinois; said affiant says he obtained quite a number of deeds, among which was the above deed, which deeds related to Ephraim De Witts's lands, for whose heirs this affiant is the attorney in fact; that at the same time, and among which deeds and papers were the Exhibits "A" and "B," hereunto attached.

Said Edward Dixon delivered these [these] papers to affiant, and said he obtained them from one James Adams, who had been with the Mormons.

That said Adams, who was the administrator of Eliphalet
280 Hawley, the former agent of Ephraim De Witt, and had charge of said Ephraim De Witts' papers and patents for the purpose of recording the same in 1822, at Bushville. That said Hawley was reported to have been murdered or drowned while on his way to the county seat of Schuyler county from Springfield.

That said Edward Dixon further stated to this affiant, that a portion of the patents and papers belonging to Ephraim De Witt fell into the hands of one John L. Bogardus and Francis Gants.

That the above deed from John Walworth to Levi Beebe, conveying S. W. 27, T. 15; N. R. 7 east in Illinois, was shown to, and reviewed by Henry Strong, a brother of this affiant, at Galesburg, about the year 1856 or 1857.

That said Henry Strong is now in the army; that this affiant believes his affidavit can be had if time will permit.

That said affiant cannot swear as to the deed being genuine, only from its general appearance, and compairing it with other deed

acknowledged before same parties, and from this comparison it had the appearance of a genuine deed; and also from the fact that it was with the other deeds and these exhibits. Further said affiant sayeth not.

JOHN B. STRONG.

Sworn to and subscribed before me this 16th Nov., A. D. 1863.
WM. H. BRADLEY, *Cl'k.*

[5 cent U. S. revenue stamp.]

Endorsed: "Filed Dec'b, 1863. W. H. Bradley, cl'k.

281 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the Circuit Court of the United States within and for said northern district of Illinois, do hereby certify the foregoing transcript to be a true and correct copy of the original affidavit of John B. Strong, and of the exhibits therein referred to, and made and filed in said court, in the cause therein pending, wherein Catharine B. Walworth *et al.* are plaintiffs, and Joseph Weldrich and Nicholas Weldrich are defendants, as the original of the same now remain in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district of Illinois, this 18th day of October, A. D. 1866.

[L. S.] WILLIAM H. BRADLEY, *Cl'k.*

[5-ct. stamp.]

"Filed Oct. 14th, 1866.

"THOS. M. LUSTER, *Cl'k.*

Circuit Court, October term, 1866.

JAMES DEXTER ex'r of JOHN B. JAMES *et al.*
vs
JOHN B. STRONG *et al.* } In chancery.

STATE OF ILLINOIS, *Warren county:*

This cause coming on again, on motion of the complainant,
282 it is ordered that the bill of complaint be dismissed as to the defendants, George P. Sloan, Frederick Gayer, and Nathan J. King, without prejudice, and the cause then coming on for a final hearing on the bill of complaint, the disclaimers of Michael Secrist and Jacob Hayden, and the evidence taken in the case, and the report of the master in chancery; and it appearing to the satisfaction of the court that all the statements and allegations of the bill of complaint are true, it is therefore ordered, adjudged, and decreed that the deed described in the bill of complaint, as purporting to be executed by William James to Levi Beebe, and dated October 13, 1819, and purporting to be witnessed by Jacob Downing and Estes Howe, and to

be acknowledged before Estes Howe, judge of Albany county Common Pleas Court, judge and ex-officio, performing the duties of a judge of Supreme Court at Chambers, and recorded in Knox county, on the 13th day of October, 1862, and in Warren county, on the 30th day of September, 1862, and which said pretended deed purports to convey the several tracts of land described in the bill, be, and is hereby, set aside and annulled as forged, fraudulent, and void as between the parties hereto, and all persons claiming by, through, or under them, or any of them; and it is further ordered, adjudged, and decreed that said instrument of writing, purporting to be executed by Levi Beebe to Ephraim De Witt, bearing date the 1st day
283 of November, 1822, and purporting to convey all the interest of the said Levi Beebe, in any lands in the State of Illinois, and which is described in the bill, be set aside and annulled as forged, fraudulent, and void as between the parties hereto, and all persons claiming by, through, or under them, or either of them.

And it is further ordered, adjudged, and decreed that the said defendants, and all persons claiming by, through, or under them, or either of them, be, and are hereby, enjoined and restrained from setting up the said papers, or either of them, against the said complainants, or any person claiming by, through, or under them.

And it is further ordered, adjudged, and decreed that the defendants, except the said Michael Secrist, and Jacob Hayden, and the said George P. Sloan, Jacob Hayden, and Nathan J. King, pay all the costs of this cause, to be taxed by the clerk, and that the complainants have execution therefor as in cases at law, and this cause is stricken from the docket.

C. L. HIGBEE.

"Filed Oct. 24th, 1866.

THOS. M. LUSTER, *Cl'k.*"

284 STATE OF ILLINOIS, *Warren county, ss:*

I, Thomas M. Luster, clerk of the Circuit Court within and for the county of Warren and State of Illinois, do hereby certify the above and foregoing to be a true and perfect copy of the record of the cause of James Dexter, executor, &c., *et al.*, *vs.* John B. Strong *et al.*, as the same appeard of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at my office, in this month, this 23d day of November, D. A. 1866.

[SEAL.] THOS. M. LUSTER, *Clerk.*

[5-ct. int. rev. stamp cancelled.]

285

286 To the reading of which in evidence, and also to the proof of the same, the said defendant then and there objected, but said court overruled each of said objections, to which decisions, so overruling said objections, the defendant did then and there except; and said decree thereupon was read in evidence.

This was all the evidence.

The court then inter alia, instructed the jury as follows, to wit:

The plaintiff had shown a grant of the land described in the declaration by the United States, to William T. Davenport, by a patent dated May 27th, 1818, a deed from William T. Davenport to Eliphalet Hawley, dated September 1st, 1818, a deed from Eliphalet Hawley to Thaddeus Munson, dated December 12, 1818, a deed from Thaddeus Munson to William James, dated February 13th, 1819, all conveying the land in controversy, and the deeds all recorded in May, 1819. The effect of this patent and these deeds was to vest a good title in William James, unless defeated by a deed from William T. Davenport to Ephriam De Witt, in the manner to be hereafter explained.

287 If William James died in 1832, as testified by Gideon Hawley, and his heirs living at the time the proceedings for partition were commenced in the Circuit Court of Pike county, were made parties to that suit, then whatever title William James had, at his death, passed, by the operation of the decrees, in that case, to John B. James, and the court left the question as to the death of William James, whether his heirs were made parties to the partition proceedings to the jury, to be determined from the evidence. It appeared from what Marion Cogswell stated that John B. James died in 1856, and although this was a question of fact, yet there was no controversy about it. Assuming this fact, whatever title John B. James had, was vested in the plaintiff at the time this suit was commenced.

If the jury should find, from the evidence, that the heirs of William James, living when the partition proceedings were had, were made parties to that suit, then the plaintiff had, considering his own evidence, merely established a prima facie right to recover.

The jury were further instructed that the deed from Daven-

288 port to Hawley was recorded in the proper office, under the laws of Illinois, before the deed from Davenport to De Witt, and if Hawley was a purchaser for a valuable consideration, without notice of the unrecorded deed from Davenport to De Witt, then Hawley, and those claiming under him, acquired a good title as against De Witt, and those claiming under him. The court was of the opinion, from the circumstances proven in this case, that the law would presume that the deed to Hawley was made upon and for a valuable consideration. The court left the question to the jury to decide whether Hawley had such notice, and they were to determine whether there was notice or not from the evidence.

The court instructed the jury to disregard the deeds purporting to be made by William James to Levi Beebe, and by Levi Bebee to Ephraim De Witt, because they had been declared to be forged, and set aside by the Circuit Court of Warren county, Illinois, in a suit by the plaintiff in this cause, impleaded with others against the defendant Carpenter and others. The record in that case was

289 binding upon the defendant Carpenter, and concluds him as to the validity of these alledged deeds.

The only questions which the court deemed it material to leave to

the jury were, first, the enquiry in regard to the death of William James and the identity of his heirs living, when the partition proceeding in Pike county was commenced with the parties in that suit, and second, the question as to notice of the unrecorded deed from Davenport to De Witt, to Hawley, and those claiming under him.

(The question reserved upon the will of William James was not further mooted, though the plaintiff referred to, and relied upon, the case reported in 16th Wendell's Reports, 61, concerning his will, as the court in this case was of opinion, in consequence of the facts in evidence here, the point was not material as to property in this State.)

To that part of the instructions of the court which left it to the jury to say under what circumstances the decree in partition was to vest title in John B. James, the defendant then and there excepted; and also to that part of the instructions which left it to the jury, in the manner therein stated, to say whether or not
290 Hawley was a bona fide purchaser, without notice of any other deed from Davenport, the defendant then and there excepted.

[SEAL.] THOMAS DRUMMOND.

Endorsed: "Filed May 30th, 1867. Wm. H. Bradley, Cl'k."

291 And on this day, to wit, the seventeenth day of June, A. D. 1867, came the said defendant, by his attorneys, and filed in the said clerk's office his motion for a new trial in the said entitled cause, which said motion is in the words and figures following, to wit:

Motion by def't. for new trial.

United States Circuit Court, northern district of Illinois.

HENRY CARPENTER
ads.
JAMES DEXTER, executor, &c., of JOHN B. James.

And now comes the said defendant, by Garrison & Blanchard, his attorneys, and move the court for a new trial in the above cause, for the following reasons, to wit:

1. The court erred in admitting improper evidence for the plaintiff, and in overruling def't's exceptions and objections thereto.

2. The court erred in excluding proper evidence for the defendant, and in sustaining plaintiff's objections thereto.

3. The court erred in admitting the pl'ffs deeds from Davenport to Hawley, from Hawley to Munson, and from Munson to
292 James, and the record of partition in Pike county, and the decree from Warren county, and the pretended will of John B. James.

4. The court erred in charging the jury the title stood in William James at the time of his death, and that the decree from Warren

county set aside the deed from William James to Levi Bebee, and was binding on the defendant.

5. The court erred in allowing the will of John B. James to be read in evidence, and in overruling defendant's objections to the reading thereof.

6. Pl'ff. did not prove title in himself, and did not prove such title or right of possession as warranted the verdict.

7. The verdict was contrary to the law and the evidence.

8. The jury did not find according to the evidence, but found contrary to the evidence.

9. The court erred in deciding that there were but two questions of fact to be submitted to the jury.

10. The defendant, having proved possession and paramount title, and having not only the older, but the better title to the premises in dispute, the verdict and judgment should be in his favor.

293 11. The pl'ff having actually, by proof, shown he has not the title, or the right of possession, cannot maintain this action. He claims under Wiliam James, but William James made a will and devised the land to Gideon Hawley, James King, and Augustus James, in whom the title of William James remains.

12. The court should have instructed the jury the pl'ff could not recover under the evidence.

13. The undisputed evidence, shown on the trial, proved the defendant was the owner in fee, and the verdict should have been in his favor.

14. No proof that John B. James was ever the owner of the land in controversy.

GARRISON & BLANCHARD,
For Def'ts.

Endorsed: "Filed June 17th, 1867. Wm. H. Bradley, Cl'k."

294 And on this day, to wit, the seventeenth day of June, in the adjourned May term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER. } Ejectment.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant, heretofore entered herein, for a new trial of this cause, and, after hearing the arguments of counsel, the court takes the same under advisement.

295 And this day, to wit, the eighteenth day of June, in the adjourned May term, A. D. 1867, of said court, in the record

the jury were, first, the enquiry in regard to the death of William James and the identity of his heirs living, when the partition proceeding in Pike county was commenced with the parties in that suit, and second, the question as to notice of the unrecorded deed from Davenport to De Witt, to Hawley, and those claiming under him.

(The question reserved upon the will of William James was not further mooted, though the plaintiff referred to, and relied upon, the case reported in 16th Wendell's Reports, 61, concerning his will, as the court in this case was of opinion, in consequence of the facts in evidence here, the point was not material as to property in this State.)

To that part of the instructions of the court which left it to the jury to say under what circumstances the decree in partition was to vest title in John B. James, the defendant then and there excepted; and also to that part of the instructions which left it to the jury, in the manner therein stated, to say whether or not
290 Hawley was a bona fide purchaser, without notice of any other deed from Davenport, the defendant then and there excepted.

[SEAL.] THOMAS DRUMMOND.

Endorsed: "Filed May 30th, 1867. Wm. H. Bradley, Cl'k."

291 And on this day, to wit, the seventeenth day of June, A. D. 1867, came the said defendant, by his attorneys, and filed in the said clerk's office his motion for a new trial in the said entitled cause, which said motion is in the words and figures following, to wit:

Motion by def't. for new trial.

United States Circuit Court, northern district of Illinois.

HENRY CARPENTER
ads.
JAMES DEXTER, executor, &c., of JOHN B. James.

And now comes the said defendant, by Garrison & Blanchard, his attorneys, and move the court for a new trial in the above cause, for the following reasons, to wit:

1. The court erred in admitting improper evidence for the plaintiff, and in overruling def't's exceptions and objections thereto.

2. The court erred in excluding proper evidence for the defendant, and in sustaining plaintiff's objections thereto.

3. The court erred in admitting the pl'ffs deeds from Davenport to Hawley, from Hawley to Munson, and from Munson to
292 James, and the record of partition in Pike county, and the decree from Warren county, and the pretended will of John B. James.

4. The court erred in charging the jury the title stood in William James at the time of his death, and that the decree from Warren

county set aside the deed from William James to Levi Bebee, and was binding on the defendant.

5. The court erred in allowing the will of John B. James to be read in evidence, and in overruling defendant's objections to the reading thereof.

6. Pl'ff. did not prove title in himself, and did not prove such title or right of possession as warranted the verdict.

7. The verdict was contrary to the law and the evidence.

8. The jury did not find according to the evidence, but found contrary to the evidence.

9. The court erred in deciding that there were but two questions of fact to be submitted to the jury.

10. The defendant, having proved possession and paramount title, and having not only the older, but the better title to the premises in dispute, the verdict and judgment should be in his favor.

293 11. The pl'ff having actually, by proof, shown he has not the title, or the right of possession, cannot maintain this action. He claims under Wiliam James, but William James made a will and devised the land to Gideon Hawley, James King, and Augustus James, in whom the title of William James remains.

12. The court should have instructed the jury the pl'ff could not recover under the evidence.

13. The undisputed evidence, shown on the trial, proved the defendant was the owner in fee, and the verdict should have been in his favor.

14. No proof that John B. James was ever the owner of the land in controversy.

GARRISON & BLANCHARD,
For Def'ts.

Endorsed: "Filed June 17th, 1867. Wm. H. Bradley, Cl'k."

294 And on this day, to wit, the seventeenth day of June, in the adjourned May term, A. D. 1867, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER. } Ejectment.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the defendant, heretofore entered herein, for a new trial of this cause, and, after hearing the arguments of counsel, the court takes the same under advisement.

295 And this day, to wit, the eighteenth day of June, in the adjourned May term, A. D. 1867, of said court, in the record

of the proceedings thereof in the said entitled cause, in the following entry, to wit:

Record.

JAMES DEXTER, executor of JOHN B. JAMES, deceased,
vs.
HENRY CARPENTER.
} Ejectment.

The court having considered, and being now fully advised upon, the motion of the defendant, heretofore submitted for a new trial of this cause, overrules the same. It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant possession of the said real estate and premises aforesaid described, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor; and that he also have and recover of the defendant the said sum of one cent, his damages, so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of thirty-four dollars and eighty-one cents, and that he have execution therefor.

296 An on this day, to wit, the twenty-seventh day of June, A. D. 1867, came the said defendant, by his attorneys, and filed in the said clerk's office his appeal bond in the said entitled cause, which said appeal bond is in the words and figures following, to wit:

297 Supreme Court of the United States.

Appeal bond.

HENRY CARPENTER
vs.
JAMES DEXTER, executor, &c., of JOHN B. James, deceased.
} In error.

Know all men by these presents, that we, Henry Carpenter and John T. Carpenter, are held and firmly bound unto the above-named James Dexter, executors, &c., of John B. James, deceased, in the sum of fifteen hundred dollars, to be paid to the said James Dexter, executor of John B. James, deceased, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and [and] administrators firmly by these presents.

Sealed with our seals and dated this 25th day of June, A. D. 1867.

Whereas, the above-named Henry Carpenter, hath prosecuted a writ of error, to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the Circuit Court of the United States for the seventh circuit and northern

298 district of Illinois in the above-entitled case.

Now, therefore, the condition of this obligation is such, that if the above-named Henry Carpenter shall prosecute his said writ of error to effect, and answer all damages for rents and use of the premises, and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HENRY CARPENTER. [SEAL.]
JOHN T. CARPENTER. [SEAL.]

The words "for rents and use of premises," interlined before signing.

Witness:
A. GARRISON.

Endorsed: "Approved, Thomas Drummond, filed June 27th, '67. Wm. H. Bradley, cl'k."

299 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the Circuit Court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript, from pages one to two hundred and ninety-eight, inclusive, to be a true, full, and perfect copy, from the record of all the proceedings had in said court, in said cause of James Dexter, executor of John B. James, deceased, against Henry W. Carpenter, as the original of the same now remain in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district of Illinois, this second day of December, A. D. 1867.

[SEAL.] WM. H. BRADLEY. *Cl'k.*

[5 cent U. S. revenue stamp.]

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

The United States of America to the judges of the Circuit Court of the United States for the northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said court before you, between James Dexter, executor of John B. James, deceased, plaintiff, and Henry Carpenter, defendant, a manifest error hath happened to the great damage of Henry Carpenter, as by complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of